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CURRENT TOPICS

Action against Hunt: No Representation Order

USEFUL guidance on the often perplexing problem of who must be sued when a complaint is made against an unincorporated association is to be found in a decision of the Court of Appeal on 26th February (*Winder* v. *Ward and Others*, *The Times*, 27th February). The county court judge against whose decision the plaintiff appealed had refused to grant him a representation order under Ord. 5, r. 8, of the County Court Rules, 1936, under which where numerous persons have the same interest in an action or matter, one or more of them may be sued. The order had been sought against the Master of the Essex Hunt, the secretary and the huntsman, in an action for a declaration and an injunction to restrain members of the hunt from entering on the plaintiff's land. Lord Justice JENKINS said that it was impossible to hold that every single member of the hunt was answerable for the misdeeds of the pack. A member might not have hunted for twenty years, or might have gone abroad. *Prima facie*, if anyone was answerable, it was the Master, and possibly the executive committee. Each member of the hunt might have a separate defence if a representation order were granted, and if that were done and the action succeeded, each member could be committed for contempt if he thereafter trespassed. The court also held that, there being no written rules, the hunt was an ill-defined body of members lacking the necessary homogeneity to entitle the plaintiff to the relief claimed against all the members.

"Praying a Tales"

SPECTATORS in the public gallery of the Nottingham Assize Court were asked by Mr. Justice FINNEMORE on 26th February to volunteer for immediate service on a jury in order to return a formal verdict of "not guilty," in a case in which the learned judge directed that such a verdict should be returned. The procedure is known as "praying a tales" and the learned judge said that "it does not happen once in ten or twenty years that there are insufficient jurors to try a case." In a letter to *The Times* of 2nd March, Mr. ALAN J. LEES said that the procedure was not quite so rare as would appear from Mr. Justice Finnemore's remarks, as it was invoked as recently as 12th February of this year at Chester Assizes, when a jury was impanelled from Press reporters and others attending the court on business, and it had been invoked some three years ago at the same Assizes. The writer of the fourth leader in *The Times* also recalled a celebrated breach of promise case in the Guildhall when a tales was prayed.

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Larceny by Hire Purchasers

WHEN dealing with a prisoner who pleaded guilty on 1st March at Shropshire Assizes to charges of obtaining a motor bicycle by means of a forged hire-purchase agreement, larceny of the bicycle as bailee and obtaining money by false pretences, Mr. Justice HILBERY made a suggestion for the reform of the law. According to a newspaper report, he said that a plate should be fixed to every article sold by hire-purchase, and that it should not be removed until the article had been paid for in full. The idea is not new. The old reports contain a number of cases in which an owner's name, seal or initials were placed on goods bailed to traders, in order to avoid the incidence of the reputed ownership clause in bankruptcy (see *Ex parte Marrable* (1824), 1 Glyn & J. 402; *In re Popple* (1841), 2 Mont. D. & De G. 259). Sometimes the device succeeded and sometimes it did not; it depended on the circumstances. Whether the reform suggested by Mr. Justice Hilbery would prevent larceny by a bailee or other unlawful dealings with goods comprised in hire-purchase agreements is open to doubt. A person determined to commit an offence would not be afraid to remove the owner's name plate. A system of compulsory registration might help, if it could be devised, but until this comes about traders will have to take such steps as they can for their own protection.

The Striped-Trouser Class

IT is never unwise nowadays to employ an accountant with tax experience to unravel the more intricate of our financial problems affecting tax liability. Professional people are likely to find that an expert will also be able to think of deductions which they would not be likely to think out for themselves. Such ingenuity met only partial success in the case of the employees of the John Lewis partnership as recorded in its current Gazette. A recent agreement with the Revenue has secured an increased business dress allowance of from £2 to £5 a year from 6th April, 1957. Assistants in perfumery, hairdressing and certain other departments qualified, but not departmental managers and general assistants. The men did not qualify for an allowance for their black jacket and striped trousers, because, the Revenue stated, this is "a common type of dress which is worn either by choice or necessity by men in other walks of life." The reasoning is not perfect, for one would have thought that the only question is: "Does one wear it exclusively and necessarily for the purposes of one's occupation?" There must be many lawyers, and shop assistants, and undertakers, who could take a solemn oath that in their individual cases this is so. From this point of view, it may be that persons in these categories who wear their uniform on other than business occasions have let down their side.

THE AUTHORITY OF A PROXY

NORMALLY when a shareholder appoints a proxy, it is because he does not intend to vote himself. If he subsequently changes his mind, he can usually revoke the authority in an effective and unequivocal manner. But what is the position if the shareholder and the proxy both turn up and wish to exercise the voting rights? In *Cousins* v. *International Brick Co., Ltd.* [1931] 2 Ch. 90 the Court of Appeal affirmed the decision of Luxmoore, J., and held that, in a case where the authority of the proxy had not been validly revoked in accordance with the articles of association, the shareholder who had given the authority was nevertheless free to attend at the meeting and vote personally; and that, when he had done this, the vote tendered by the proxy was properly rejected. In the course of his judgment in that case, Romer, L.J., said: ". . . when a shareholder appears at the meeting and says he prefers to vote in person, he is not revoking the proxy previously given, but doing an act which does away with the necessity of the proxy ever being exercised at all. A proxy is always subject to an understanding that the shareholder giving it does not elect to give his vote in person and when he in fact gives a vote in person he is not revoking the authority but taking a step which obviates the necessity of the proxy being used at all."

Appointment for a definite period

It is possible, however, for an agent to be constituted irrevocably or for a definite period of time. If a proxy is appointed for a definite period of time, can the shareholder then attend the meeting and personally exercise the voting rights attaching to the shares? That is the question which Vaisey, J., was asked to consider in *Holman* v. *Glegg* on 1st February. Although the learned judge eventually decided that the question was one of construction of the documents in the particular matter, the case is not without interest and importance by reason of the fact that it helps to draw attention to points which have to be borne in mind in drawing up the documents giving the authority to a proxy.

In the case in question, the defendant, a woman shareholder with a substantial interest in a certain company, had given a proxy to two accountants. The proxy was in common form but was accompanied by a document by which she stated that in consideration of their agreeing to act "as controllers" of the company she had signed a proxy form in their favour and undertook "not to withdraw this for two years" or until such earlier time as they might deem the company's finances to be in a solvent and satisfactory condition. A dispute arose and the defendant asserted that, notwithstanding that document, she could personally exercise the voting rights attaching to the shares registered in her name. Since the parties could not compose their differences, the court was asked to determine the matter and, if appropriate, grant an injunction to restrain the defendant from voting during the prescribed period.

"Withdrawal" of proxy by voting in person

In his judgment, Vaisey, J., pointed to the description of the plaintiffs as "controllers" and said that that wording must have meant that they were given a measure of control *vis-à-vis* the defendant. He did not think it was possible in the circumstances for her to take away that control by attending a meeting and voting in person. She undertook "not to withdraw" the authority she had given them, and, in his view, if the defendant attended and claimed to exercise the right to vote in person, she was "withdrawing" the proxy. Accordingly, he granted an injunction restraining the defendant from voting in person at any general meeting of the company in respect of any shares of which the defendant was the registered holder, and ordered her to pay the plaintiffs their costs of the proceedings.

P. H.

MASTER, SERVANT AND INSURANCE

THE decision of the House of Lords in *Lister* v. *Romford Ice and Cold Storage Co., Ltd.* [1957] 2 W.L.R. 158; *ante*, p. 106, will certainly, as Viscount Simonds apprehended, have far-reaching consequences on "the question of status . . . the relation in which the drivers of motor vehicles and their employers generally stand to each other"; it is also of interest as an illustration of the pragmatic way in which the highest tribunal goes about its business of making new law in a field hitherto free from authority.

A lorry driver, employed by a company, took his father with him as mate. In backing the lorry he injured his father, who, in an action against the company, recovered damages in respect of the driver's negligent act. The company brought an action against the driver claiming to be indemnified by him, as joint tortfeasor, against the damages and costs that it had paid or was liable to pay in the first action; alternatively the company claimed damages for the driver's breach of an implied term in his contract that he would use reasonable skill and care in driving. The Court of Appeal (Birkett and Romer, L.JJ.; Denning, L.J., dissenting) upheld the decision of Ormerod, J., in favour of the company. The driver appealed to the House of Lords.

The House was unanimous in its answer to the first of the two questions before it: "It is plain," said Lord Radcliffe, "that the law does impute to an employee a duty to exercise reasonable care in his handling of his employer's property." After quoting from Willes, J., in *Harmer* v. *Cornelius* (1858), 5 C.B. (N.S.) 236, at p. 246: "When a skilled labourer, artisan or artist is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes," Viscount Simonds observed: "I see no ground for excluding from, and every ground for including in, this category a servant who is employed to drive a lorry which, driven without care, may become an engine of destruction and involve his master in very grave liability." On the same point the House was equally united (*pace* Denning, L.J.) in its conclusion that this duty on the part of the employee was contractual in its nature.

A question of status

It was the second question that divided the House—and was framed by Lord Radcliffe as follows: "Are the respondents entitled to enforce any liability [arising from the driver's negligence] by action against him, having regard to the circumstances of his employment and in particular the statutory scheme of compulsory insurance against third party risks which related to his employment?" Should a term be implied, as Viscount Simonds put it, in "the relation of master and man that the master should, to use a broad colloquialism, look after the whole matter of insurance"? Although Lord Morton of Henryton considered the matter narrowly from "the officious bystander" point of view, in order to see if the term was necessary to give efficacy to this particular contract, it is submitted that the approach of his colleagues is to be preferred; this was really a question of "status," in which the House of Lords were settling generally the terms of the contract on which a weekly wage earner is employed—just as Holt, C.J., for example, settled the standard terms of a bailment in *Coggs* v. *Bernard* (1703), 2 Ld. Raym. 909.

In the event the majority (Viscount Simonds, Lord Morton of Henryton and Lord Tucker) held that there was no implied term; Lord Radcliffe and Lord Somervell of Harrow, dissenting, held that an employer should see that his driver was protected by insurance from any third party liability arising from his driving—and accordingly that neither employers nor insurers could sue the driver in respect thereof.

For and against

There was no authority to assist in the determination of this question and each member of the House argued from first principles. Viscount Simonds, Lord Morton of Henryton and Lord Tucker rejected the implied term because, *inter alia*, of the "familiar argument . . . asking where the line was to be drawn." Asked Lord Morton of Henryton: "Surely it must logically extend to such cases as a crane driver in factory premises and many other cases . . . which cannot logically be distinguished from the present?" The minority felt presumably the drawing of a line to be unnecessary; they were content to recognise an implied term when they saw one.

Viscount Simonds was also impressed by the difficulty of defining the implied term with sufficient precision. Lord Somervell of Harrow, on the other hand, felt with some justice that it would be "as precise as the 'i' or the 'f' in a c.i.f. contract."

The majority also felt that the existence of an implied term must be denied if it could not be shown when it came to birth; but this view is surely answered in a classic passage by Lord Radcliffe: "No one really doubts that the common law is a body of law which develops in process of time in response to the developments of the society in which it rules. Its movement may not be perceptible at any distinct point of time nor can we always say how it gets from one point to another; but I do not think that, for all that, we need abandon the conviction of Galileo that somehow, by some means, there is a movement that takes place."

A further reason for rejecting the suggested implied term was given by Viscount Simonds: "A term should not be implied . . . of which the social consequences would be harmful . . . To grant the servant immunity from action would tend to create a feeling of irresponsibility in a class of persons from whom . . . constant vigilance is owed to the community." Does not Lord Somervell of Harrow have the best of this argument when he replies: "The public interest has for long tolerated owner drivers being immune [from the financial consequences of their negligence] and it would . . . be unreasonable to discriminate against those who earned their living by driving. Both are subject to the sanctions of the criminal law"?

In the closing paragraphs of his speech Lord Radcliffe calls attention to "the almost intolerable anomalies" which are involved in the practical application of the majority conclusion. Is it not pertinent finally to comment that a powerful argument in favour of the implied term is the fact that it has taken half a century with the horseless carriage for the point to be litigated? Is that not because, in practice hitherto, business has been universally conducted upon the basis that employers *do* look after all matters of insurance?

There were, of course, difficulties to be found whatever conclusion their lordships had reached; one cannot help feeling, however, that those arising from the majority decision will increase with the passage of the years. R. E. G. H.

HIGHWAY VERGES

THE purpose of this article is to attempt to answer two questions that from time to time cause difficulty in practice :—

(*a*) When is a piece of land at the side of a metalled or made-up highway part of the highway ? ; and

(*b*) What uses may and may not be made of highway verges, i.e., land at the side of such a made-up highway that is established to be part of the highway ?

A. How wide is a highway ?

The answer is of course akin to that customarily given to the question about the length of a piece of string—it depends. Where the way runs across unenclosed country, the highway will normally be confined to the metalled or made-up portion, unless it can be clearly established that some other portion is in fact regularly used by the public ; as was pointed out by Viscount Maugham in *Searle* v. *Wallbank* [1947] 1 All E.R. 12, at p. 14, all the ancient roads in this country were probably originally unenclosed, and under the Statute of Wynton of 1285 an area of land to a depth of 200 feet on either side of the highway was required to be left clear of any " dyke, tree or bush whereby a man may lurk to do hurt."

This is not, however, the normal case to-day, nor does the unenclosed road give rise to many practical difficulties. Where there are fences the general presumption is that the highway extends between fences (or hedges) ; as was said by Joyce, J., in *Harvey* v. *Truro Rural Council* [1903] 2 Ch. 638, at pp. 642–3 : " In the case of an ordinary highway running between fences, although it may be of a varying and unequal width, the right of passage or way *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the entire of it as the highway and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers." This is, however, only a presumption, not a rule of law, and it may be displaced by evidence to the contrary. Thus :—

(*a*) *Ditch not constructed by highway authority*

Where there was a ditch between the fence and a strip of land bordering on the roadway, this ditch having been used for the drainage of the adjoining land and not having been constructed by the highway authority, it was held that the ditch did not form part of the highway, as the ditch " was not *prima facie* adapted for the exercise by the public of their right to pass and repass," and, therefore, the presumption was that the ditch was not part of the highway : *per* Farwell, J., in *Hanscombe* v. *Bedfordshire County Council* [1938] 3 All E.R. 647, at p. 650. Ditches constructed by the highway authority for the purpose of draining the highway remain, however, part of the highway.

(*b*) *Fences erected without reference to highway*

The fences must have been erected with reference to the highway, to separate the adjoining land from the highway and not from some " unenclosed close," as was the case in *A.-G. and Croydon R.D.C.* v. *Moorsom-Roberts* (1908), 72 J.P. 123, where the highway was constructed upon the surface of an already existing close, and see *Offin* v. *Rochford Rural Council* [1906] 1 Ch. 342.

(*c*) *Fences not following line of highway*

If the fences do not form a reasonably continuous line following the line of the highway, comparatively slight acts of ownership on the part of the adjoining owner will be sufficient to displace the presumption that a piece of " verge " between the road and the fence forms part of the highway. Thus, in *Hinds and Diplock* v. *Breconshire County Council* [1938] 4 All E.R. 24, the fence varied from 37 to 99 feet away from the roadway, and it was held on the facts that a piece of land adjoining the road at a point where the fence was at its furthest from the roadway was not part of the highway.

Ultimately such questions may in practice be solved by inquiring as to exactly what was dedicated as a highway by the original owner ; dedication of a strip adjoining the road may be presumed if the public have used the strip as part of the highway and there have been no acts of ownership exercised in respect of the strip such as will rebut the presumption. Grazing cattle on the strip is one of the commonest of such acts of ownership, and this, with other acts, was sufficient to rebut a presumption of dedication in *Countess of Belmore* v. *Kent County Council* [1901] 1 Ch. 873 ; and see the New Forest case of *Plumbley* v. *Lock* (1902), 67 J.P. 237. It should also be remembered that dedication is presumed to be subject to existing obstructions and excavations, etc., and that therefore the fact that there may be trees in the verges, or that they may be undulating, does not necessarily displace the presumption that the verges, between fences, form part of the highway.

It seems that the general presumption above mentioned will apply to walls or hedges, as well as to fences *stricto sensu*. In the case of a hedge this does not normally mean, however (as may be the case where the hedge forms the boundary between two properties : see *Fisher* v. *Winch* [1939] 1 K.B. 666), that the boundary of the highway is to be taken as the centre of the hedge ; the highway is that piece of land that is capable of being used by the public to pass and repass thereon—no one can walk along a hedge, however sparse it may have become, and consequently the boundary of the highway would normally be held to be the outer edge of the hedge as it was when the highway came into existence. If, however, the hedge had grown outwards, obstructing the highway (as in *Turner* v. *Ringwood Highway Board* (1870), L.R. 9 Eq. 418), the width of the highway cannot be thereby diminished, for " once a highway, always a highway."

B. Use of a highway verge

The public have a right to use a highway only for the purpose of passing and repassing thereon, and any other user of the highway, including the verge, is a trespass to the owner of the soil beneath the highway—thus, there is no right " to sit down in the middle of a road," as was said by Scrutton, L.J., in *The Carlgarth* [1927] P. 107, nor may a member of the public use the highway so as to interfere with the adjoining occupier's shooting rights (*Harrison* v. *Duke of Rutland* [1893] 1 Q.B. 142). On the other hand, the owner of the subsoil may be unknown, or he may not worry about the use made of the grass verge ; he may not mind persons picnicking thereon or gypsies parking their caravans there. In other circumstances the misuse of the verge may be by the occupier or owner of the adjoining land himself ; he may depasture his cattle on the verge, or, in an urban area, he may use a piece of highway waste between the footpath and his own forecourt for the exhibition of his wares which he is offering for sale at his shop adjoining. What can the highway authority do in such circumstances ?

Straying cattle

If cattle are allowed to stray on a highway (including the verge) without a keeper, or to " lie about " with or without a keeper, proceedings may be taken under s. 25 of the Highway Act, 1864, but mere pasturing, if the cattle are not allowed to lie down, and are in the charge of a keeper, does not appear to be an offence.

Parking

As to the parking of vehicles on a grass verge, this would seem to be a proper use of the highway, provided the vehicle is not driven on a footpath—" a lorry driver is not doing anything wrong if he drives his lorry on the grass verge at the side of the road so as to be out of the way of traffic using the highway. Indeed, that is a proper thing to do because other vehicles will not then have an obstructed road " : *per* Lord Goddard, C.J., in *Rodgers* v. *Ministry of Transport* [1952] 1 All E.R. 634, at p. 635. This must be read, however, within the context of a temporary stop for a legitimate purpose, e.g., to enable the lorry driver to call at a neighbouring wayside café for refreshment. It is also clear that if as a consequence of the parking being effected negligently or unreasonably some other innocent user of the highway suffers injury, the person responsible for parking the vehicle will be liable in damages ; thus in *Wilkins* v. *Day* (1883), 12 Q.B.D. 110, a farmer who had left for several hours a large agricultural roller on a grass verge was held liable for injuries suffered by a person driving a pony along the highway which was frightened by and shied at the roller ; and see the somewhat similar case of *Harris* v. *Mobbs* (1878), 3 Ex. D. 268. The only remedy open to the highway authority in cases of persistent or protracted parking on verges is for an obstruction of the highway under s. 72 of the Highway Act, 1835, or by proceedings at common law in nuisance for an obstruction. Unless some person using the highway has been actually hindered in his lawful occasions, however, the penalty under the Highway Act is not likely to be substantial and nuisance proceedings are usually too cumbersome to be of any practical value. In the case of gypsies or others camping on the verge, it may be possible to use the powers of s. 269 of the Public Health Act, 1936, prohibiting the use of " moveable dwellings " without a licence from the local sanitary authority, but before such proceedings can be taken (as distinct from proceedings for obstruction) there is a " period of grace " of forty-two consecutive days. Some housing authorities have found this question of parking on verges to be a particular annoyance on their housing estates, and some have included a clause in their tenancy agreements prohibiting the practice. This can, of course, be effective only as against their own tenants, and it would probably be enforceable only in so far as it related to the verge in front of the particular house let to the individual tenant. In other cases local authorities have obtained local Act powers enabling them to prohibit, by notices posted in prominent positions, the parking of vehicles on grass margins ; but these provisions often prove difficult to enforce in practice, and the injury to the " amenities " caused by the posting of notices may actually prove to be almost as great as that caused by the parking of vehicles.

Picnicking, etc.

Picnicking on a grass verge is probably technically a highway obstruction (unless this is a reasonable thing to do, as it might be held to be, at least at a beauty spot, within Lord Goddard's observations in *Rodgers* v. *Ministry of Transport, supra*), and a trespass to the owner of the subsoil. The picking of wild flowers on the verge will probably not be an offence, unless it is prohibited under a byelaw made by the local county council or borough council under s. 249 of the Local Government Act, 1933.

Trading

The highway authority may also wish to prevent trading on the verges, such as the selling of fruit, the parking of ice-cream or " hot-dog " stalls and " pull-ups for carmen," etc., which seems to have become such a common practice along the main roads of this country, at least during the summer months. Local Act powers, or byelaws, would seem to be the best means of controlling such abuses.

Improvement

The authority have ample powers to improve existing highway verges—they may construct a " lay-by " under s. 48 of the Highway Act, 1864 (technically a road " widening " at that point), and they may provide grass " margins " at the sides of roads by s. 58 of the Road Traffic Act, 1930, and alter and remove existing verges under s. 57, *ibid.*, as amended by s. 40 of the Road Traffic Act, 1934. The authority may abate any encroachment on highway waste, and recover as special damages any expenses thereby incurred from the person guilty of the encroachment : *Louth U.D.C.* v. *West* (1896), 65 L.J.Q.B. 535 ; and see *Harris* v. *Northampton County Council* (1897), 61 J.P. 599.

Powers under Town Police Clauses Act

In boroughs and urban districts the local authority (not necessarily the *highway* authority) may take proceedings under s. 28 of the Town Police Clauses Act, 1847 (incorporated by s. 171 of the Public Health Act, 1875) in respect of any person who (*inter alia*) " wilfully causes any obstruction in any public footpath or other public thoroughfare," and this section may be used to prevent trading from highway wastes. It may also be relevant to refer to *Fabbri* v. *Morris* [1947] 1 All E.R. 315, in which case proceedings under s. 72 of the Highway Act, 1835, were upheld where ice-cream had been sold from a shop window and a crowd had been caused to assemble and obstruct the highway in consequence.

Ownership of timber and crops

Finally, it should be remembered that the highway authority have no ownership of timber or valuable crops, etc., growing on the verge at the time of dedication (subject of course to any agreement between the authority and the original landowner). Dedication will be presumed to have been effected subject to any trees, etc., then existing, and the property in the trees will remain, subject as aforesaid, in the owner of the subsoil ; the fee simple owned by the highway authority relates only to the " top crust " : *Tithe Redemption Commission* v. *Runcorn U.D.C.* [1954] Ch. 383. *Aliter* if the trees have been planted by the highway authority under some statutory power, such as the Roads Improvement Act, 1925, s. 1.

J. F. GARNER.

Mr. GLYN PARRY JONES, an assistant secretary to The Law Society, has been appointed secretary of the South Wales Legal Aid Area in succession to Mr. Herbert Lloyd.

Mr. JOHN DAVID OLDROYD, assistant solicitor to Burton Corporation, has been appointed deputy Town Clerk of Macclesfield, Cheshire, and will commence his duties at the end of March.

A Conveyancer's Diary

EQUITABLE ASSIGNMENT: IMPERFECT GIFT

THE case of *Re Wale* [1956] 1 W.L.R. 1346 (also reported shortly at 100 SOL. J. 800) is an almost copy-book example of the application to particular facts of two sets of rules, those governing respectively the assignment of equitable choses in action and the perfection of imperfect gifts.

A settlor executed a settlement which recited that the settlor was absolutely entitled to the investments specified in the schedule and had transferred them into the names of the trustees, who were the two sons of the settlor; and the settlement then went on to declare that the trustees should hold the said investments upon trust for the settlor for life, and after her death upon various trusts for the benefit of the settlor's daughter and the latter's issue. Now the recital that the settlor was absolutely entitled to the scheduled investments was an accurate recital: at the date of the settlement she was the registered owner of some half of these investments (these investments were in the proceedings referred to as the " A " investments), and she was absolutely entitled thereto beneficially; and at that date the remainder of the investments were registered in the names of herself, the settlor, and her two said sons as executors of the settlor's late husband's estate, and to these investments (which in the proceedings were referred to as the " B " investments) the settlor was also absolutely entitled beneficially. But the further recital that the settlor had transferred these investments into the names of the trustees of the settlement was not accurate: the shares remained until the date of the settlor's death registered in the name of the settlor, or in the joint names of the settlor and her two sons, as the case might be, and there was evidence that the settlor had forgotten about the existence of the settlement and had treated these investments as being at her absolute disposal.

On the death of the settlor, the settlement came to light and the question then arose whether the " A " and " B " investments had become subject to the settlement, or had to be treated as part of the settlor's estate. The decision of the court was that the " B " investments were so subject, but that the " A " investments were not.

The settlement was a voluntary settlement, and a man may make a voluntary transfer of his property in one of two ways: he may either do such acts as amount in law to a conveyance or assignment of the property, and thus completely divest himself of the legal ownership, in which case the person who by those acts acquires the property takes it beneficially; or the legal owner of the property may, by one of the modes recognised as amounting to a valid declaration of trust, constitute himself a trustee and without an actual transfer of the legal title may so deal with the property as to deprive himself of its beneficial ownership. This statement of the rules relating to the voluntary transfer of property is taken from the judgment of Sir George Jessel, M.R., in *Richards* v. *Delbridge* (1874), L.R. 18 Eq. 11. To these rules there is an important corollary. If the transfer is intended to be effectuated by one of these two possible modes and the transferor's intention is for any reason frustrated, the court will not give effect to the transfer by applying another of those modes: " If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust [in the event of its failure as a transfer], for then every imperfect instrument would be made effectual by being converted into a perfect trust," *per* Turner, L.J., in *Milroy* v. *Lord* (1862), 4 De G. F. & J., 264, at p. 274.

The statement of Sir George Jessel that a voluntary transfer of property may take the form either of a conveyance of the legal estate or a declaration of trust is subject to this qualification, that in the case of a transfer of an equitable chose in action an equitable, that is to say an informal, assignment is sufficient. That is certainly so in the case of an assignment for value, and in the case under consideration Upjohn, J., held that a voluntary assignment was in this respect no different from an assignment for value. Where (as was the case here) the subject-matter of the assignment is itself equitable, this is generally regarded as being so (see, e.g., Snell's Principles of Equity, 23rd ed., p. 59). An equitable assignment may take many forms. It may purport to operate as an assignment, but for some reason fail to operate as such, for example, because the requirements of the statute have not been fulfilled. Another form of equitable assignment consists in a direction to trustees who hold the legal estate of the subject-matter of the assignment on trust for the assignor, to hold the property henceforth on trust for the assignee.

A necessary implication

It was this mode of assignment which the learned judge held to be applicable in the case of the " B " investments. But it will be remembered that the legal estate in these investments was outstanding in the settlor and her two sons, as trustees of the settlor's husband's will. The settlement contained a direction that the trustees thereof (viz., the two sons) should hold the scheduled investments on trust. If the " B " investments had been registered in the names of the two sons alone, holding on trust for the settlor, this would have been the simplest case of an equitable assignment of an equitable chose in action by the recognised mode of the *cestui que trust* directing the trustees to hold the property on trust for the assignee; did the fact that the direction contained in the settlement was addressed to two only of the trustees who were the legal holders of the " B " investments, and contained no similar direction addressed by the settlor to the settlor herself, make any difference? No, said Upjohn, J. " If the beneficial owner gives directions to the other two, it is necessarily implicit that, in his or her capacity as trustee, the beneficial owner will, of course, conform in doing all that is necessary to carry out the directions he or she has given: see *Bentley* v. *Mackay* (1851), 15 Beav. 12."

Applying the principles so formulated, the settlement constituted a perfectly clear assignment of the settlor's equitable interest in the " B " investments to the trustees of the settlement, on the trusts therein declared. The misrecital of fact in the earlier part of the settlement could not control or qualify the plain and unambiguous language of its operative part.

Imperfect gift and change of intention

So much for the " B " investments. The " A " investments were in a different position. The settlor was the legal owner of these investments, and as she had not divested herself of the legal ownership in favour of the trustees the settlement constituted an imperfect gift, which equity would not perfect at the suit of the volunteer beneficiary. That meant that the

settlement did not, initially, include the "A" investments in its scope.

The qualification "initially" is important because of the argument which was put forward on behalf of the beneficiaries under the settlement based on what has come to be known as the rule in *Strong* v. *Bird* (1874), L.R. 18 Eq. 315. This is the rule whereby an imperfect gift may be perfected after the death of the donor by the appointment of the donee by the donor to be his executor and the vesting of the property in the donee *qua* executor, thus completing his title at law. But it is a condition of the operation of this principle that the intention to make the gift on the part of the donor should remain unchanged until his death: if the intention continues unchanged it is "sufficient to countervail the equity of beneficiaries under the will, the testator having vested the legal estate in the executor" (*per* Neville, J., in *Re Stewart* [1908] 2 Ch. 251, at p. 254). It was argued on behalf of those interested in upholding the settlement in this case that this principle should be applied to the "A" investments, but Upjohn, J., after a close examination of the facts, came to the conclusion that some time before she died the settlor had completely forgotten about the settlement. She did not, therefore, "evince any continuing intention in relation to the 'A' investments so as to bring the principle of *Strong* v. *Bird* into operation."

Thus one block of investments was held to have been caught by the settlement, while the other block escaped its mesh. Both blocks were in the absolute beneficial ownership of the settlor. The difference between the two blocks that springs to the eye is that the settlor was the owner at law of the "A" investments, but only the owner in equity of the "B" investments. This is, in itself, an insubstantial difference to anyone but a lawyer, but even this was not the reason for the difference in treatment accorded to the two blocks of investments. The determining factor was that the trustees of the settlement were also two of the trustees in whom the "B" investments were vested at law. Truly, a nice point on which the rights of beneficiaries should rest.

"A B C"

Landlord and Tenant Notebook

STATUTORY TENANT'S SUCCESSOR

In *Trayfoot* v. *Lock* [1957] 1 W.L.R. 351; *ante*, p. 171 (C.A.), the court had to consider an interesting question of conflicting claims to a statutory tenancy, to be determined pursuant to the Increase of Rent, etc. (Restrictions) Act, 1920, s. 12 (1) (*g*): ". . . the expression 'tenant' includes the . . . widow of a tenant . . . who was residing with him at the time of his death, or, where a tenant . . . leaves no such widow . . . such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court." Candidates who are not widows of the deceased have to establish six months' residence (Rent, etc., Restrictions (Amendment) Act, 1933, s. 13); but nothing turned on that in the recent case. The question was, in fact, a twofold one; whether the facts of the case showed that agreement had been reached and whether, if they did not, a particular consideration was relevant to the decision.

The facts

On 11th June, 1955, the plaintiff's father, who had been tenant of a controlled house for some forty years, signed a document prepared by a solicitor and addressed to his landlord's agent, which said: "I, the undersigned *P.T.*, of 125 Lower Mortlake Road, etc., hereby request you to permit me to assign my tenancy of 125 Lower Mortlake Road, etc., to my son *W.P.S.T.*, who lives at this address. In the event of my death it is my wish that the tenancy should pass to him." At some time or other he made a will leaving his household furniture, goods, etc., to that son. It is a pity that we are not told when his tenancy had become a statutory one, as it had when he died on 20th December of that year; we are left guessing whether the document used the word "assign" in a very wide sense; and whether the will deliberately omitted the tenancy because whoever prepared it appreciated that a statutory tenancy cannot be assigned.

Some time before *P.T.* died, the above-mentioned son and the husband of a step-daughter, both of whom resided with him in the house, each asked the landlord's agent to accept him as tenant. The agent declined both requests.

The deceased died a widower, and, besides the two above-mentioned applicants, two other persons fulfilled the requirements of para. (*g*): the step-daughter (the defendant in the action) and an uncle (four years older than the deceased), but neither of these made any claim. What happened was that at an interview on 4th January, 1956, the agent (to whom the document was presumably produced) told the son and the son-in-law that he was giving the tenancy to the son "as next-of-kin." The brother-in-law did not protest; the agent wrote on the top of the rent book the words: "Mr. *W.P.S.T.* succeeded to the statutory tenancy of the late Mr. *P.T.*, who died 20th December, 1955"; after that, the son paid the rent but gave his step-sister another "rent book," entering 10s. a week for her accommodation.

Soon afterward the son decided to get married, and it was in furtherance of his intention that he sued his sister-in-law for possession, whereupon she laid claim to a para. (*g*) tenancy. By consent, the question was referred to the registrar of the county court as arbitrator (County Courts Act, 1934, s. 89).

Default of agreement

The first point was whether the defendant had, by her conduct, fulfilled the requirement of "agreement." The registrar held that neither her husband's failure to protest at the agent's decision nor her acceptance of a responsibility of 10s. a week towards the rent had had that effect; and the Court of Appeal agreed with this view of the matter, Denning, L.J., pointing out that, being ignorant of the law, she had merely accepted the agent's statement that the son was entitled to "the" tenancy as next of kin. "They did not really agree to it but they took the agent's word for it."

Relevance of deceased's wishes

But the registrar, though the point was not taken before him, formed the conclusion that the document signed earlier in the year had been procured "under the suggestion, perhaps pressure," of the plaintiff and that it "failed to represent the freely expressed desire of" the deceased.

There was, Denning, L.J., observed, some inconsistency in this: the registrar had technically included it so as to look at it, "but then in the next breath he has excluded it, because he said he would not pay any attention to it."

There was no justification for the surmise that the document did not evidence a "freely expressed desire," and it was, it was held, a "very relevant matter for the registrar to consider." For when the court had to consider which member of a family, it must consider all the circumstances of the case. The fact that the son was a blood relation of the deceased, weighed against the fact that the daughter-in-law had kept the house, left the matter evenly balanced; but, said Denning, L.J., "In those circumstances the decisive factor seems to me to be the deceased tenant's wishes. Such wishes may not always be an overriding consideration, but they may in some cases, and this is one. The father had lived in the house for all these years. It was his tenancy. He had by his will given all the furniture to his son. He would presumably want the tenancy of the house also to go to the son."

"The tenancy"

The inconsistency in the registrar's approach may have distracted attention from one point about which it would have been interesting to hear rather more.

"Transmission on death" is, we know, an expression used, sometimes apologetically, by writers and authorities when describing the position dealt with by the Increase of Rent, etc. (Restrictions) Act, 1920, s. 12 (1) (*g*). *Tickner* v. *Clifton* [1929] 1 K.B. 207, in which a landlord unsuccessfully sued the daughter of the deceased tenant for rent owing by the latter (and also for mesne profits claimed against the latter), showed clearly that the "transmitted" tenancy is in fact a new tenancy. Since then, *Moodie* v. *Hosegood* [1952] A.C. 61 has demonstrated that, if the deceased were a contractual tenant when he died, a statutory tenancy and a contractual tenancy can (no doubt unpeacefully) co-exist.

For this reason, I would respectfully suggest that it should not be postulated that the wishes of the deceased are among the "circumstances of the case," and that the judgment is more in keeping with the provision when (as earlier on) the expression used is "a" tenancy and not "the" tenancy and "his" tenancy.

There would, I submit, be much to be said for the view that, a statutory tenancy not being capable of forming part of a deceased's estate, his nomination ought not to be considered a circumstance relevant to the choice at all. But there is, indeed, very little authority on what should guide the court; it cannot emulate Solomon, and ought not to be influenced in the way Paris was influenced; but there is some suggestion, at county court level, that the interests of the landlord do come into the picture. In *Trayfoot* v. *Lock* the plaintiff was forty-one years old, the defendant fifty-five; the views expressed in *Munday* v. *Munday* (1951), 102 L. J. News. 123 (C.C.), suggest that—though in that case the disparity was much greater—that might have been considered a factor favouring the defendant; not because of her seniority but because, there being no "second transmission on death" (*Pain* v. *Cobb* (1931), 146 L.T. 13), the landlord would be able to look forward with more hope to the possibility of "enjoying his own again."

R. B.

HERE AND THERE

THE VARIED HUNT

WITH elephants and imaginary tame tigers in Mr. Justice Devlin's court, with an unusually large and varied assortment of libel actions and with Mr. Justice Donovan climbing telegraph poles, the law seems intent on establishing that it can provide as much entertainment in real court life as the new, rather well-noticed film of Henry Cecil's fantasy in litigation. And now there's hunting-pink in the Court of Appeal. So into the grey corridors there comes a vision of the colourful neighbourliness of a meet, say, at a quiet cross-roads under the Sussex Downs with pink coats and black and a few tweed jackets; top hats, bowlers and jockey-caps; an occasional older lady riding side-saddle, pretty young girls astride; the hounds in a field by the roadside; the knots of well-wishers on foot chatting with the riders. In actual fact the case concerned the Essex Hunt and neighbourliness was less in evidence, since a farmer was objecting to a trespass on his land and was seeking to make the hunt liable by suing the master, the secretary and the huntsman in a representative action. The county court judge had refused to make a representation order, rightly, so the Court of Appeal held, for, said Lord Justice Jenkins, although the hounds were held under a trust deed, every member of the hunt was not responsible for their day-to-day operation. Each member might have an individual defence to an action for trespass, and his lordship gave some examples suggesting considerable variety in the sporting instincts of the hypothetical membership. One might not have hunted for twenty years. Another might have crossed the disputed fields in the excitement of the chase but prudently tendered nominal damages as soon as he recovered his presence of mind and his recollection of the legal text-books. Another, less well mounted or less hard-riding, might be able to establish that he had never reached the debatable territory at all. Another (if one may enthusiastically follow the lord justice's line across country) might plead that his horse had bolted and carried him without his own volition he knew not whither. Another might prove that his law-abiding steed had halted suddenly before the farmer's hedge and refused, lightly tossing its rider over its head, so that in so far as he entered on the land it was by *force majeure* and against his own desire. With a field so disunited in the pursuit, it is no wonder that the hunt was held not even to have got as near as a trade union to acquiring a shadowy legal entity.

HUNTING CASES

FOX-HUNTING actions in the courts are all too rare, though one would have thought that the reckless dash of the fox-hunter would have carried him over the fences of litigation as easily as over those in the hunting-field. One such action which, one infinitely regrets, was smothered in the cradle by an untimely settlement was a claim for libel arising out of a light-hearted magazine article, describing a horse-back adventure and containing a particularly derogatory description of a wealthy manufacturing Master of Hounds, which a real-life Master of Hounds claimed to recognise as a defamatory caricature of himself. In sporting Ireland, one hopes and believes, the case would have run its full exciting course with "view halloo" and "gone away." Ireland is the place. I like the story of the distinguished hunting

jurist who, being challenged by an angry farmer to say by what law he was trespassing on his lands, replied "the *Lex Tallyhonis*" and rode on. And, as to responsibility for the misdeeds of hounds, never was there such an action as the one brought against Peter O'Brien, afterwards Lord O'Brien of Kilfenora and Chief Justice of Ireland, when in his early days he wore a pink coat and exercised jurisdiction over a very miscellaneous pack of hounds or collection of dogs in Kilfenora. Once for a week they vanished from the village on what turned out to be a large-scale sheep-killing expedition. The farmers sued O'Brien as the Master of Hounds, the ostensible owner of the pack, but he pleaded that he was not their owner, as he neither housed nor fed them. They lived all over the village in any cartsheds or stables they could find and were fed at the workhouse gate on the leavings of the paupers' dinners, assembling at the ringing of a bell. On these facts judgment was given for the defendant.

SIGN OF THE SICKLE

THE Essex Hunt should be thankful that the challenge to its cross-country activities has been made in due form of law and not in the manner of the old gentleman of Crawley who, in defence of seven acres of land, had lately challenged the Under-Sheriff of Sussex to a duel with sickles. He may have been encouraged by the success with which the Surrey farmer recently opposed force, shot-guns and barbed wire to the attempts of the electricity authority to fell his trees. But one so valiant at eighty as the old gentleman of Crawley can hardly stand in need of any encouragement. As a retired chemist he might well have challenged his opponent to a laboratory duel in which each should concoct the deadliest fumes and brews. But he did not. He is resisting a compulsory purchase order, refusing £830 compensation for land which he claims is worth £5,000. The 150 official letters sent to him he had returned inscribed "Communist gangsters taboo." Brandishing his sickle, thus expressly dissociated from the hammer, he says: "They will take this land over my dead body. Tell the Sheriff I shall fight until one of us is dead." Clearly Sheriffs and Under-Sheriffs are not what they were in old Sherwood Forest. This Under-Sheriff is a solicitor, who says: "I am no swordsman. Though I possess sickles and scythes I prefer to fight with words." In this case the words had better be remotely controlled, long-range guided missiles, for if words break no bones, they would hardly parry a sickle at close quarters.

RICHARD ROE.

Country Practice

MEN OF LETTERS

IMPROVISATION means inefficiency. If you ever wonder what life is like in those marvellous offices where typists—skilfully directed, of course—do all the work, you can take it from me that the place just reeks of efficiency; and if any improvisation becomes necessary the boss is called in. But whoever wants to improvise, with the law stationers just round the corner and the electronic office equipment people further down the street? If a valued client with an awkward problem should appear, counsel's opinion is available in a matter of hours; and if a less valued client brings in *his* tiresome problem, why, he can go to some less efficient firm. In a biggish town, once you have got a practice together, you can apply an efficient selective weed-killer to your clientele, and quite soon you are left with few problems except personal ones of how to pay your sur-tax.

Supposing a Slavic national of German ethnic origins suddenly wishes to sign a statutory declaration which, he hopes, may bring a child west of the Iron Curtain. The commissioner for oaths will note the printed instructions which oblige him to affix his official seal. In a town, the efficient solicitor will send the declarant post-haste round to the nearest notary, and that's that. When I was confronted with that situation, the nearest notary was twenty-five miles away, so I dreamed up my own official seal, and very imposing it was, too. It took some time, and the declarant seemed surprised that such artistry should cost but half a crown. His daughter slipped through the Iron Curtain before it closed again, and I like to think that my inefficiency contributed to the family reunion.

This tendency to do odd things has been accentuated by the petrol shortage. Typewriter repairers are not so keen on an hour's drive to see why the machine jumps one space every time the little bell goes ping, and thus inefficient use is made of paper clips and pink tape to tide things over. It was the same when we recently changed the name of our firm; it became necessary to display the new name where the old name had previously been printed, painted or engraved. This was all attended to, apart from two wire screens in the windows of our little branch office. One can look through the fine wire mesh and see without being seen. The problem was to emblazon the new name on the wire screens—an easy job for any craftsman.

In country places, sign-writers simply do not exist. Painters and decorators are to be found, but apparently none knows how to write. I looked hopefully at one chap, who had made a nice job of graining the chemist's shop front; but he turned out to be a capital "I" dotter. Another decorator—a decent Methodist, too—kept a set of stencils. If this does not horrify you, skip the rest of this article.

To those who are still with me, including the idly curious, it is worth remarking how one comes to appreciate one's own stock-in-trade. A joiner takes pleasure in the feel of a well planed plank, and a farmer will sniff a dung heap with the zest displayed by a wine lover sampling something really good. I rather like looking at deeds. Doing mainly agricultural conveyancing, I come across far more interesting documents than does an urban lawyer. The town conveyancer might, with luck, come across the last conveyance before the estate was broken up for building sites. Just recently I handled a grant, in Latin, from a nobleman lately enriched by the dissolution of a great monastery. The abbey itself is in picturesque ruins, but the house to which the grant relates still stands, not a mile from my home. The same family has lived there for more than two centuries.

The best written deeds I have handled are those done in the eighteenth century. The steel pen, though invented, was not then much used on parchment. Goose and turkey quills formed the writing. The handwriting was round, upright, even and readable; and the link between printing and handwriting was then quite obvious. When you come to think

of it, Caxton's aim must have been to make the printed characters look as though they had been written by hand—"printing" did not take sudden, unalterable shape all at once, like the Morse code. For some centuries, type was modelled on quill written characters. Only when the steel pen raced away, and achieved upstrokes which no quill could attempt without spluttering, did printing settle down and give up the chase. If some fifteenth century monk had invented a ball-pointed pen, printing would have imitated the characters formed naturally by a ball-point. But he didn't, and it didn't, and I for one feel slightly relieved.

The steel pen was quite capable of sightly writing, particularly in the copperplate styles favoured in some Victorian deeds. Its ability to accomplish upstrokes with ease led to a very cursive form of handwriting, but the resulting deeds were not so instantly readable as the best deeds of the previous century. N's and m's and u's and w's tended to look very much alike. Edward Johnston, in his fascinating work "Writing & Illuminating & Lettering," quotes the word "minimum" as being particularly unreadable in the Gothic style of writing; the same word is equally a trap to the steel and fountain pen. Written with a quill in upright round hand, it remains readable at a glance. Cut yourself a quill, and see for yourself—and if you find that you cannot write with it at all, that is your fault, and not the quill's.

I am quite an admirer of neatly spaced and aligned typewritten deeds. But, if my esteemed publishers will permit me to say so, some solicitors do not produce such worthy engrossments as some law stationers.

As I was saying before being carried away by thoughts of deeds well done, petrol rationing has accentuated the tendency to do odd things. It was soon apparent that good letterers of wire screens do not exist in country districts—they are as scarce as certified bailiffs. (I rather harp on the fact that I once got myself certified as a bailiff and actually levied a distress; and very inefficient I was, too.) Well, on this occasion there seemed no alternative; I obtained the necessary materials and painted the sign myself. The lettering is in gold, and it took me two evenings to complete. The use of my time, time which I could have spent in dictating things into an electronic dictating machine, will not bear inspection; but the lettering will.

"HIGHFIELD"

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Vacant Sites and Rights to Light

Sir,—I have read with interest your recent articles on the subject of Vacant Sites and Rights to Light.

I am wondering whether it really is the case that the only remedies open to the owner of a vacant plot of land to prevent his neighbour acquiring a right to light are either to persuade his neighbour to enter into a written agreement or to erect a hoarding for the purpose of physically obstructing the light.

Section 3 of the Prescription Act, 1832, provides that the right to light is acquired after twenty years' enjoyment unless it shall appear that the light has been enjoyed by virtue of some consent or agreement by deed or in writing.

Although obviously it takes two parties to make an agreement, the Act refers to a consent in writing as an apparent alternative. It occurs to me, therefore, that a consent in writing given unilaterally by the owner of the prospective servient tenement to the owner of the prospective dominant tenement might, if suitably drafted, be sufficient to prevent time running, although obviously if the owner of the vacant land wished to impose conditions as to payment, etc., an agreement between the two parties would be necessary.

Surely a landowner who is well aware of his rights and ready to do everything he can to preserve them should not be prejudiced because he is unable to persuade his neighbour to enter into an agreement or for some reason unable to erect a physical obstruction.

JOHN S. BARNES.

London, W.8.

[Our contributor "S" writes: This is a most interesting suggestion. An owner who is quite unable to erect an obstruction and who cannot persuade his neighbour to enter into an agreement may be inclined to adopt it in the hope that the writer's reasoning will prevail. Nevertheless, we must, regretfully, dissent from this reasoning.

Time does not run under the Prescription Act, 1832, s. 3, if the light is "enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing." We take the view that if the light is in fact enjoyed for some time the subsequent execution of a unilateral consent by the servient owner does not stop time running. Provided the dominant owner does not ask for consent or rely in any way on such a consent, we think the light is not, even after the date of the consent, "enjoyed by . . . consent"; in our view, it is still enjoyed as it was before the consent, that is, adversely to the servient owner. We have not been able to find a decision to this effect, but we think the wording of Pollock, C.B., in *Frewen* v. *Phillips* (1861), 11 C.B. (N.S.) 455, and the judgments in *Bewley* v. *Atkinson* (1879), 13 Ch. D. 283, and in *Hyman* v. *Van den Bergh* [1907] 2 Ch. 531, give some support for our opinion.]

Premium Bonds as a Trust Investment

Sir,—In reply to the inquiry of "Escrow," vol. 101, p. 168, the prize when the bond is withdrawn is, I submit, income.

The bond was originally a deposit of cash and the relative cash value is available when the bond is withdrawn. The bond prize does not increase the capital holding as do the stocks or shares of a company where a bonus issue in stocks and shares is made.

The prize is a "chancy" earning and the bond remains alive.

W. A. EMERY.

London, E.C.2.

Playing Out Time

Sir,—Your article on "Repudiation for Defective Title," p. 77, is a reminder to conveyancers that contracts can go off after they have been exchanged. It is, of course, more common for the defects to be overcome in various ways. Usually the purchaser is anxious to get possession by a given date. Knowing this, the vendor frequently can give evasive answers to some requisitions, such as the one I recently raised: in the case of a conveyance in 1928 which was recited to be made by trustees of a religious charitable trust, "Was the permission of the Charity Commissioners obtained prior to the sale?" The successive answers to my requisitions were as follows:—

(i) This must be presumed.

(ii) We are endeavouring to ascertain this information.

(iii) Will the purchaser consent to complete first and we will do our best to satisfy this inquiry afterwards.

(iv) It is a part of a large estate and in the course of many transactions this question has never been raised before.

(v) The trust deed establishing the charity gave the charity power to sell or dispose of its property and otherwise deal with it as it thought best.

(vi) The parties are all dead and as this transaction took place twenty-eight years ago we think time must have run against the vendor charity.

(vii) Short of a declaration in Chancery our client does not know what he can do about it now.

(viii) (Upon completion.) Why do they have to make conveyancing so difficult?

I still remain in doubt whether this was not a matter prior to the root of title upon which I was not entitled to inquire.

Surrey. N. P.

REVIEWS

Medical Negligence. By the Rt. Hon. LORD NATHAN, P.C., a Solicitor of the Supreme Court. With the collaboration of ANTHONY R. BARROWCLOUGH, B.A., of the Inner Temple, Barrister-at-Law. 1957. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

Lawyers, doctors and public alike have been preoccupied during the last few years with the great increase in negligence actions against doctors and hospitals. Since such cases have increased out of proportion to other negligence actions the advent of legal aid cannot be entirely responsible, and no one has suggested that since the coming of the National Health Service doctors have become less careful or skilled in the treatment of their patients. Lord Nathan, possibly because of his experience as Chairman of the Board of Governors of Westminster Hospital, deplores this increase and appears surprised that it should have occurred. But is it really so surprising? When hospitals were voluntary and the surgeons or physicians gave their services for no return save the kudos gained thereby—no mean return, in point of fact—the patient felt that he was fortunate to get any treatment at all; he did not appreciate the delictual origin of the tort of negligence, nor that the action was based on *assumpsit*, but he possibly felt that there was no contractual relationship between himself and the doctor and that there was, consequently, no remedy for any injury he might suffer at his doctor's hands. Quite apart from this the patient felt a natural aversion to taking the serious step of injuring the reputation of a medical man who had given his services to the community.

Whatever the reason may be, these actions have increased, and a book of this kind is very welcome, particularly as it covers a wide field with clarity and erudition. In fact, the field is wider than the title suggests: assault—operations without the patient's consent—and the liability of hospitals for deleterious food and dangerous premises are also dealt with; and the difficult question of the distinction between the duty to invitees and licensees is made as clear as is possible with this trying (and perhaps dying) branch of the common law. A valuable feature of this book is the Sypnosis, which analyses the cases referred to under the relevant chapter headings: an unconventional method but one well suited to a book which is intended for non-legal readers as well as lawyers.

Of particular interest to the solicitor is the inclusion of a large number of American and Dominion decisions which are not readily available but which are of great value in advising on cases which are not covered by any decisions of our own courts.

Altogether, this is a book which can be thoroughly recommended as a comprehensive, well ordered survey of a subject of great practical importance. It should be some consolation to the medical profession to realise, as is here made abundantly clear, that the courts are as alert to the difficulties and limitations of the doctor as they are to the patient's need for protection.

Pension Scheme Precedents. By WILLIAM PHILLIPS, of the Middle Temple and the Midland Circuit, Barrister-at-Law. 1957. London: Sweet & Maxwell, Ltd. £4 4s. net.

Pension schemes for the employed have proliferated in the last decade and provision for the self-employed has been made a practical proposition by the Finance Act, 1956: in these circumstances much has been written and published on the subject of late. This volume, however, is the best and most ambitious that has appeared.

Most of the difficulties affecting pension provisions spring from what the author very nicely describes as a "dishevelled collection of uncodified statutory provisions" which are to be found in the taxing statutes. Accordingly Part I of the book consists of an admirable summary of the general law together with explanations of the differing methods of constituting pension schemes and of the differing methods of quantifying pensions payable thereunder.

Parts II–VI consist of fully annotated precedents of various different schemes with explanations of their various uses. They are many and varied, covering every type of scheme from that constituted by rules only without a trust deed to that constituted by Private Act of Parliament and including for instance schemes with more than one class of member and more than one employee. It is stated that with the exception of the precedents operating under the Finance Act, 1956, all those published are based upon schemes actually in use to-day.

The book is handsomely produced and the old controversy of pages or paragraphs has been solved in a novel way by omitting page numbers altogether and relying on paragraphs, starting a new "100" with each chapter: this seems very satisfactory.

Your reviewer has no doubt at all that anyone who has to draw, or advise upon the formation of, a pension scheme should have this book beside him.

A Handbook on the Administration of Estates Act (Northern Ireland), 1955. By WILLIAM A. LEITCH, LL.B., Solicitor. 1956. Belfast: Incorporated Law Society of Northern Ireland. £2 5s. net.

Most English solicitors will be surprised to learn that up to the end of 1955 the devolution on intestacy of personalty in Northern Ireland was determined by a statute similar in its terms to the Statute of Distributions, 1670, and realty continued to pass beneficially to the heir. The Administration of Estates Act (Northern Ireland), 1955, provides for the assimilation of real and personal estate for the purposes of devolution on death and of descent on intestacy, introduces new rules for distribution on intestacy and makes new rules in respect of grants of representation and administration of assets.

There is not now a great deal of difference between the English law contained in the Administration of Estates Act, 1925, and the Intestates' Estates Act, 1952, on the one hand and the law of Northern Ireland enacted by the 1955 Act on the other hand. Yet the rules are not the same in some material respects. For example, where an intestate leaves a spouse and issue the surviving spouse takes a statutory legacy of £1,500 in Northern Ireland (£5,000 in England), and where only one child survives, one-half of any residue, but where more than one child survives, one-third of any residue (compared with a life interest in one-half of the residue in England). The major portion of this book consists of detailed comments on the various sections of the 1955 Act and, as this is so largely based on English statutes, decisions of our courts are frequently and accurately cited. The only doubt we would express is whether the author is right in implying (as the text at pp. 98, 99 appears to do) that an assent must be in writing even if the same person is both personal representative and beneficiary. Notwithstanding the slight variation from the relevant provision in the Administration of Estates Act, 1925, we would suggest that the same considerations apply as in English law. Most of our tests have shown the notes to be most accurately and carefully written and we are sure this book will be essential to solicitors practising in Northern Ireland, and useful to any solicitors in England concerned with estates there.

The Scientific Investigation of Crime. By L. C. NICKOLLS, M.Sc., A.R.C.S., D.I.C., F.R.I.C., Director, The Metropolitan Police Laboratory, New Scotland Yard. 1956. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

This is an extremely detailed and wide-ranging text book which in many respects improves upon and to some extent replaces Gross's classic work. It is not easy reading and is a book for the specialist. The solicitor who is frequently engaged

in the criminal courts, whether for the prosecution or the defence, will find it of great help, but we think that he would be wise to devote a considerable amount of time to studying it before using it as the basis for the cross-examination of expert witnesses. The scientific resources which are now available throw into relief the gap which still exists between the crimes which are known to the police and the number of convictions which are obtained. The police know perfectly well that many men and women now enjoying their freedom are guilty of crimes which cannot be proved by methods acceptable in a court of law. There is a certain reluctance on the part of magistrates and all juries to convict purely on scientific evidence. Whether it would be right for magistrates to receive some kind of scientific instruction before embarking upon their functions is difficult to say, since the subject is so wide that only a prolonged course would be adequate to deal with it. As things are, courts are very much in the hands of the expert witness and the liberty of the individual, therefore, depends almost entirely upon the integrity of the scientist. However that may be, we feel that a wider knowledge of science and of the methods which are used by the police in detecting crime would be useful to all courts and, provided that they are prepared to make the effort of concentration which is necessary to follow the close reasoning and exact description which is contained in this book, we think that all who are engaged in the administration of criminal justice would profit from reading it. The author is the Director of the Metropolitan Police laboratory and, therefore, writes with the highest possible authority.

POINT IN PRACTICE

Estate Duty—Conveyance of House in Consideration of Annuity to Husband and Wife during Joint Lives, Remainder to Survivor for Life

Q. H, aged 67, wishes to convey his house (market value about £3,500) to his young married son. The consideration is an annuity of £100 per annum to *H* and *W*, his wife aged 63, during their joint lives, remainder to the survivor for life. (1) Is there any difference in practice between securing the annual payment by way of rent-charge as in precedent 240 of the Encyclopædia of Forms and Precedents, 3rd ed., vol. XV, and by way of an annuity as in precedent 241? (2) It appears that estate duty will be payable under s. 1 of the Finance Act, 1894, on the actuarial value, based on the surviving life, of the interest ceasing on the first death. If this value is under £10,000 will this " property passing " be aggregable with the rest of the deceased's estate? (3) Will the value of the annuity passing on the death of the survivor of *H* and *W*, be aggregable for estate duty purposes and, if so, how will it be calculated? (4) If the annuity is given to trustees to be paid at their absolute discretion to either *H* or *W*, is any duty chargeable on the dropping of the first life?

A. (1) We do not think that either of the precedents mentioned has any particular advantage over the other. We would observe, however, that if precedent 241 were used, omitting the provision whereby the annuity was charged upon the property and leaving it to rest in personal covenant, then no duty would be payable under the Finance Act, 1894, s. 2 (1) (*b*), on the death of the survivor of *H* and *W*. (2) If there is one annuity payable during the joint lives and to the survivor for life, then there may or may not be a charge to duty on the first death. *H* is providing the whole consideration money and *prima facie*, therefore, he is entitled to the whole of the annuity during his life. If he in fact receives the whole of his annuity during his life then, if he is the first to die, duty will be payable upon the whole of the then actuarial value of the annuity, and if *W* is the first to die, duty will not be payable at all. If, on the other hand, it can be shown that *H* and *W* do in fact enjoy the annuity jointly, one half of it being accounted for to *W* for her own use, then duty will be payable upon one-half of the actuarial value on the first death, whether that be of *H* or *W*. If *H* is the first to die, we think that the annuity could not be said to be exempt from aggregation, because, if settled at all, it would be comprised in a settlement made by the deceased or out of funds provided by him (see Finance Act, 1954, s. 33 (1)). We think that if *W* were the first to die it might well be possible that the annuity would not be aggregable. (3) On the death of the survivor no duty will be payable if, as suggested above, the annuity rests in personal covenant alone. If, however, it is charged upon the house or any other property, there will be a charge under the Finance Act, 1894, s. 2 (1) (*b*), which will be calculated as provided for in s. 7 (7), *ibid.*, that is to say, by reference to the slice of the income of the property upon which it is charged which is required to produce the amount of the annuity. (4) Where property is held upon discretionary trusts for two persons, then on the death of one of them the other must necessarily become entitled to the whole, and therefore estate duty would be chargeable. (5) Although it may not be necessary to draw attention to the fact, we would observe that, having regard to the Finance Act, 1940, s. 44 (1), as amended by the Finance Act, 1950, s. 46 (1), quite apart from the estate duty payable on the annuities, estate duty will be payable on the death of *H* upon the then value of the house as a gift *inter vivos*. Furthermore, the annuity, which, by subs. (1A), is to be disregarded as consideration, will be a benefit reserved upon the conveyance of the house, so that duty thereon will continue to be chargeable even after the expiration of five years.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

"THE SOLICITORS' JOURNAL," 7th MARCH, 1857

On the 7th March, 1857, The Solicitors' Journal wrote: " We have received a pamphlet by Mr. J. R. Taylor, law stationer, of Chancery Lane, on the advantages which would accrue to society at large, and particularly to the legal profession, from adopting the plan of leaving off business at one p.m. on Saturday. Probably we are all of one mind on this subject. Some of us really work too hard—a still larger number think that we do, and we all like to be told so. It flatters our vanity to hear that we are much busier than our forefathers and when we feel inclined to be lazy there is no excuse so pleasant or so ready as a character for diligence . . . We have . . . very considerable doubts as to the genuineness of the cry which is so widely raised in the present day against overwork. In the last generation the courts of equity sat till 10 at night and equity draftsmen, pleaders and conveyancers kept their chambers open till the same hour. The routine work of a solicitor's office might perhaps be brought to a close rather earlier than it is at present; but to the solicitor himself, if he is in considerable business, holidays, half or whole, must be a rare occurrence . . . Mr. Taylor has . . . pointed out one class upon which the present arrangements bear very hardly—the class of law writers . . . Briefs, drafts and voluminous documents of all kinds are given out by the various solicitors' houses to the law stationers to get them properly copied and examined by Monday morning . . . His notion of a Saturday half-holiday . . . is mainly this—that solicitors ought so to arrange their affairs as to give out what copying they have on Friday night or early on Saturday. We certainly think that this is a reasonable request."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

INCOME TAX: UNITED KINGDOM COMPANY AGENT OF NON-RESIDENT FOREIGN COMPANY TRADING HERE

Firestone Tyre & Rubber Co., Ltd. *v.* Lewellin (Inspector of Taxes)

Lord Morton of Henryton, Lord Radcliffe, Lord Tucker and Lord Cohen. 14th February, 1957

Appeal from the Court of Appeal ([1956] 1 W.L.R. 352; 100 SOL. J. 262).

A company registered in the United Kingdom (hereafter called "Brentford") was assessed to income tax on the profits of its business of branded tyre manufacturers within the United Kingdom. In addition, it was assessed on the profits of the trade of marketing the branded tyres carried on with customers on the Continent of Europe. This additional assessment was made on the footing that Brentford was itself carrying on that trade or, alternatively, that a foreign non-resident company (hereafter called "Akron"), which owned all the shares in Brentford, was (*a*) itself carrying on the trade within the United Kingdom of selling the tyres outside the United Kingdom, or (*b*) carrying on that trade through the agency of Brentford. Akron had made agreements relating to the sale of its branded products with distributors on the Continent of Europe, giving them lists of the suppliers from whom they might order the goods. Brentford was an authorised supplier. By agreements between Akron and Brentford, the latter was authorised to fulfil orders received from distributors. A subsequent agreement made between Akron and Brentford ostensibly altered this, Brentford agreeing to fulfil all orders obtained by Akron in Europe or elsewhere as and when requested by Akron, to forward the goods ordered to the purchaser and to give instructions as to payment as requested by Akron. In practice, however, Brentford continued to fulfil orders received direct from the authorised distributors, normally without further intervention by Akron. Delivery of the goods was f.a.s. and payment was in each case effected in the United Kingdom. Brentford retained out of the payments received the cost price plus 5 per cent. and remitted the balance to Akron (or when that became impossible owing to war-time currency restrictions, it credited the sums held on behalf of Akron to a separate account in its books). Akron was supplied with details of each order effected. The Special Commissioners held that Akron was exercising a trade in the United Kingdom through the agency of Brentford. On appeal, Harman, J., affirmed that conclusion, holding that Brentford was properly assessed as the regular agent of Akron. The Court of Appeal affirmed this decision. Brentford appealed.

LORD MORTON OF HENRYTON said that he agreed with the conclusions of the Court of Appeal. The questions before the Special Commissioners were: (*a*) whether Brentford was carrying on a trade on its own behalf of selling tyres to persons outside the United Kingdom; and, if not, (*b*) whether Akron was exercising within the United Kingdom a trade of selling tyres to persons outside the United Kingdom, and, if so, (*c*) whether that trade was carried on by Akron through the agency of Brentford. The Special Commissioners answered question (*a*) in the negative and the Crown did not seek to contest this decision. The House was only concerned with questions (*b*) and (*c*). The relevant provisions of the Income Tax Act, 1918, were Sched. D, para. 1, and general rr. 5 and 10. It was clear that if Akron was carrying on the trade through the agency of Brentford the agency was "regular" within r. 10, and counsel for the appellant company did not seek to rely on that rule. It could not be doubted that the trade of selling tyres to persons outside the United Kingdom was exercised within the United Kingdom. The next stage was to consider whether there was evidence to justify the Special Commissioners in finding that during the relevant years Akron was exercising the trade through Brentford as its agent. This question must be answered in the affirmative. The Special Commissioners correctly summarised the position in para. 16 (*d*) of the case stated: "It seems to us that the effect of the agreement of 8th February, 1936, and the course of the dealings between Akron and Brentford was to set up standing arrangements whereby Brentford agreed to hold goods of its own at the disposal of Akron and to sell the same on Akron's behalf to customers approved of by Akron and subject to terms imposed by Akron; and, further, to account to Akron for the proceeds of the sales less the cost of the goods sold plus 5 per cent." The appeal should be dismissed with costs.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Honeyman*, Q.C., and *David Wilson* (*Lovell, White & King*); *Sir Frank Soskice*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 464**

Court of Appeal

RENT RESTRICTION: POSSESSION: GREATER HARDSHIP ON LANDLORD: LANDLORD'S PERJURY ON ANOTHER ISSUE: DISCRETION

Yelland *v.* Taylor

Jenkins, Morris and Sellers, L.JJ. 14th February, 1957

Appeal from Uxbridge County Court.

The landlord of a dwelling-house made an application for possession, on the grounds (*a*) that the letting was a furnished one and therefore not within the Rent Acts; (*b*) that he could offer suitable alternative accommodation, and so bring into effect s. 3 (1) (*b*) of the Act of 1933; and (*c*) that he required the house for his own accommodation, and was suffering greater hardship within para. (*h*) of Sched. I to the Act. The county court judge found that the alternative accommodation was not suitable, and that the balance of hardship was in favour of the landlord, but he also found that the letting was unfurnished and that the landlord and certain witnesses had conspired to deceive the court by giving false evidence on this issue; and, in view of that circumstance, he held that it was not reasonable to make an order for possession. The landlord appealed.

JENKINS, L.J., said that he did not propose to attempt to define the scope of the court's discretion in these Rent Act cases, but it seemed to him that one could at all events say this: that the interests of the parties were plainly relevant to the exercise of such discretion and, in his view, in a case of this sort, where the judge found that a plaintiff landlord had sued a tenant, putting in the forefront a lying claim that the letting was a furnished letting, the judge was well entitled to hold it in the interests of the tenant, and unreasonable from the tenant's point of view, that having successfully defeated that perjured claim, the tenant should be put in peril on a different ground if the lying plaintiff had a second string to his bow on which he could make out some sort of case. Accordingly, in his (his lordship's) view, it could not be said that this matter of the plaintiff's lying evidence was a matter which the judge could not take into consideration in determining whether it would be reasonable to make an order or not. That being so, there was an end of the case. It was very salutary that landlords should appreciate that if they chose to found their claims for possession on evidence they knew to be false, then when they asked the judge for an exercise of discretion to enable them to get possession on some other ground, the judge might think it right to refuse them that relief. In his (his lordship's) view, the court should clearly not interfere in this matter; and the appeal failed and should be dismissed.

MORRIS and SELLERS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Cyril Salmon* (*Lees, Smith & Crabb*); *Alan Fletcher* (*Turberville, Smith & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 459**

Chancery Division

PROFITS TAX: COMPANY: CONTROLLING INTEREST: REGISTER OF MEMBERS SOLE TEST

S. Berendsen, Ltd. *v.* Inland Revenue Commissioners

Wynn Parry, J. 6th February, 1957

Appeal from the Commissioners for the Special Purposes of the Income Tax Acts.

A company had an issued share capital of 1,000 shares, each of which carried one vote at meetings of the company. The directors of the company between them held 401 of the shares, carrying less than 50 per cent. of the votes at meetings, and a Danish company held 590 shares, carrying over 50 per cent. of the votes. The shareholding of one of the company's directors in the Danish company gave him control of the voting power of the Danish company. On an assessment to profits tax it was contended by the Crown that the shares of the Danish company should be added to the shares held by the directors for the purpose of ascertaining whether a controlling interest in the company was held by the directors within the meaning of para. 11 of Sched. IV to the Finance Act, 1937, as amended by s. 34 of the Finance Act, 1952.

WYNN PARRY, J., said that the phrase in para. 11 of Sched. IV to the Finance Act, 1937, "a company the directors whereof have a controlling interest therein . . .", particularly that part of it consisting of the words "a controlling interest," had been the subject of consideration before the courts on a number of occasions. Lord Greene, M.R., in *J. Bibby & Sons, Ltd.* v. *Inland Revenue Commissioners* (1944), 60 T.L.R. 369, in rejecting the argument that any attention should be paid to beneficial interests in the case of a trust was, in effect, treating the register of members as the deciding factor, though the emphasis of his judgment was not upon the register, but upon a consideration of what he (his lordship) had described as "trust law." In the House of Lords, however, it emerged from the speech of every one of their lordships that the emphasis was to be placed on the state of the register. The language of Lord Evershed in *Inland Revenue Commissioners* v. *Silverts, Ltd.* [1951] Ch. 521 made it clear beyond doubt that the Court of Appeal were there laying down (and, as he saw it, intending to lay down as a general proposition following from *Bibby's* case) that in answering such a question as the present the register of members was conclusive. The Court of Appeal in that case had had to consider two earlier cases which had been analysed before him; they were *F. A. Clark & Son, Ltd.* v. *Inland Revenue Commissioners* [1941] 2 K.B. 13, 270, and, secondly, *British American Tobacco Co., Ltd.* v. *Inland Revenue Commissioners* [1943] A.C. 335. In the *British American Tobacco* case the House of Lords held that the controlling interest was none the less in the British American Tobacco Company because it was held, as it were, at a remove. There remained the *Clark* case, in which Scott, L.J., said that the phrase "controlling interest" contemplated such a relationship as brought about a control in fact—by whatever machinery or means that result was effected. Faced with this difficulty created by the apparent conflict between *Silverts'* case following *Bibby*, on the one hand, and the judgment of Scott, L.J., in *Clark's* case on the other, he ought to follow the judgment of the Court of Appeal in *Silverts* and to accept as of general application the proposition that the register ought to be treated as conclusive and that he ought not to go behind it. Appeal allowed.

APPEARANCES: *F. N. Bucher*, Q.C., and *R. Buchanan-Dunlop* (*Denton, Hall & Burgin*); *R. O. Wilberforce*, Q.C., *Sir Reginald Hills* and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

(Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law) [2 W.L.R. 447

WILL: ADOPTION: GIFT TO COUSINS OR THEIR ISSUE: CHILDREN BORN AND ADOPTED IN BRITISH COLUMBIA

***In re* Marshall, deceased; Barclays Bank, Ltd. *v.* Marshall and Others**

Harman, J. 6th February, 1957

Adjourned summons.

T by his will bequeathed legacies and his residuary estate after the death of his wife to certain named cousins, including *C. S. J.*, with a substitutional gift as follows: "Provided always that should any of the above cousins be then dead leaving issue then living such issue shall take the share which his her or their parent would have taken had such parent survived me and my said wife and if more than one in equal shares." *T* died in June, 1945, domiciled in England, and his wife died in January, 1955. *C. S. J.* obtained a British Columbian domicile before 1912, and with his wife in 1913 entered into an agreement terminable on two weeks' notice whereby they took into their home a girl and thereafter brought her up as their child. In March, 1945, *C. S. J.* and his wife adopted by an order of the British Columbian Supreme Court a boy. *C. S. J.* died in February, 1950. A summons was taken out to ascertain whether the boy and girl were entitled to take under the substitutional gift.

HARMAN, J., said that the girl could not be so entitled; there had never been any formal adoption, and the terminable agreement under which she was taken into the family could give no general right of inheritance. The case of the boy was different, as he had been legally adopted. It was contended for the boy that the relevant date was the death of the widow in 1955, and that on that date he was entitled to take, as his status was to be determined by the law of his domicile, and under a British Columbian Act of 1953 he ranked for all purposes of inheritance as if born to his adoptive parents in legal wedlock. Against that, it was contended that the date when the class should be ascertained was the death of the testator; and that in an English will the meaning of "issue" could not be affected by the law of any foreign domicile. Considering the question on the footing of English law, it followed from s. 5 (2) of the Adoption of Children Act, 1926, that at the date of the testator's death the boy would not have been recognised in England as issue for purposes of inheritance; and the same result followed under British Columbian law. The date on which the class entitled to take must be capable of ascertainment was the death of the testator and not that of the widow; it followed that the boy was not entitled to take. Had, however, the material date been 1955, he would have been entitled to share because both he and *C. S. J.* were domiciled in British Columbia when he was adopted, and it seemed proper to follow the authorities such as *In re Luck's Settlement* [1940] Ch. 864, which indicated that the law of domicile settled the matter. Declaration accordingly.

APPEARANCES: *M. W. Cockle* (*McMillan & Mott*); *A. A. Baden Fuller* (*Candler, Stannard & Co.*); *F. Gahan*, Q.C., and *J. G. Le Quesne* (*Knapp-Fisher, Wartnaby & Blunt, Blake & Redden*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 439

Queen's Bench Division

SOLICITOR: NEGLIGENCE: FAILURE TO WARN AS TO REVOCATION OF WILLS BY SUBSEQUENT MARRIAGE: SUBSEQUENT LOSS OF BENEFITS: MEASURE OF DAMAGES

Hall *v.* Meyrick

Ashworth, J. 21st December, 1956

Action.

In 1949, the plaintiff and one *H*, whom she subsequently married, instructed the defendant, who was a solicitor, to draft wills whereby each was to confer benefits upon the other. Although the possibility of a marriage was indicated at the interview, the defendant failed to advise that marriage would revoke the wills, unless they were expressed to be made in contemplation thereof. The wills which were executed were not in this form. The plaintiff married *H* in 1950, and the wills were revoked by operation of law. Neither the plaintiff nor *H* was aware of the effect of the marriage upon their wills. *H* died intestate in 1952. In an action against the defendant the plaintiff claimed damages for the loss of the benefits which had been conferred on her by her husband's will, alleging that the loss was due to the negligence of the defendant in his professional capacity as her solicitor, in failing to advise as to the effect of a marriage on the wills in 1949, and in failing to inform her in 1950, when he was informed of the marriage, and in 1952, when the plaintiff made a new will, that the wills of 1949 had been revoked.

ASHWORTH, J., said that the plaintiff contended that the defendant was negligent in not informing her when he heard of the marriage that the wills were revoked. But no such duty

as alleged had been established; there was no rule of general application that a solicitor who had prepared a will was under a duty to inform the client after his later marriage that the will was revoked. It was next argued that the defendant failed in his duty also in 1952 when he drafted a new will for the plaintiff. But he was then dealing with the plaintiff and with her alone concerning her new will and not *H's* old will; it could not be said that he was then under a duty to inform her that her former will was already revoked. The only ground on which the plaintiff could succeed was the allegation concerning the defendant's negligence in 1949, when he failed to warn the plaintiff that if she and *H* married their wills would be revoked. The defendant, relying on *Griffiths* v. *Evans* [1953] 1 W.L.R. 1424, contended that there was no such duty; but the defendant, on hearing of the possibility of a marriage, should have warned the parties of the consequence, and the plaintiff was entitled to succeed on that ground. The question of damages was very difficult; the difference between what she would have received under *H's* will and what she received on intestacy was about £1,550 at the highest. It was clear from *Groom* v. *Crocker* [1939] 1 K.B. 194 that the plaintiff's claim was in effect a claim for damages for breach of contract, so that *Hadley* v. *Baxendale* (1854), 9 Ex. 341, applied as modified by later decisions. The defendant contended that any damage suffered was too remote, but it could be said that owing to the absence of any warning the plaintiff had failed to take any steps either before or after the marriage to obtain a new will by *H* in the same terms. So expressed, the claim seemed to be one which fell within both parts of the rule in *Hadley* v. *Baxendale*, *supra*, so that the damage alleged was not too remote. There were, however, a number of contingencies to take into account; and giving due allowance for all uncertainties, there would be judgment for £1,250. Judgment for the plaintiff.

APPEARANCES: *H. J. Phillimore*, Q.C., and *J. W. Borders* (*Linsley-Thomas & Co.*); *F. W. Beney*, Q.C., and *A. G. Friend* (*J. F. Coules & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 458**

Probate, Divorce and Admiralty Division

DIVORCE: DISPENSING WITH SERVICE OF PETITIONS: PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

N. *v.* N. L. *v.* L. C. *v.* C.

Sachs, J. 7th February, 1957

Summonses (adjourned into court).

In these three cases the petitioners sought leave to dispense with service upon the respondents of petitions praying for decrees of presumption of death and dissolution of marriage under s. 16 of the Matrimonial Causes Act, 1950. The respondent in each case had last been seen or heard of during the war in territories which were or had become within the U.S.S.R., and exhaustive efforts to trace the respondents, short of attempts which might have involved risk to others, had failed. The assistance in argument of the Queen's Proctor was invoked. *Cur. adv. vult.*

SACHS, J., said that the court should not be astute to find reasons at the outset of proceedings under s. 16 why the petitioners should incur expense under orders for substituted service by advertisement when, *prima facie*, the chances of its producing a result were in substance nil, but should be cautious lest it unnecessarily embark on issues and inquiries which could more properly and more successfully be dealt with at the trial. The position in cases under s. 16 was different from that in cases under ss. 1 and 4, for in exercising his discretion under s. 16 to grant a decree the trial judge must consider all the available evidence, including oral evidence, relating to the disappearance of the respondent spouse, and might in appropriate cases adjourn the matter for further inquiries; whereas upon other petitions for divorce the court did not normally investigate the chances of the respondent spouse being found once leave had been given to dispense with service. He (his lordship) agreed with the submission that upon such applications the risk to others of further inquiries could properly be regarded as a factor affecting the discretion of the court; if a certain course might result in great and irremediable harm, that possibility must obviously have poten weight in determining what is expedient. His lordship then gave leave, in the circumstances of the present cases, to dispense with service. Leave to dispense with service granted.

APPEARANCES: *Michael Sherrard* for the petitioner *N* (*Hunters*); *N. C. Lloyd-Davies* for the petitioners *C* and *L* (*Beckingsales*); *Colin Duncan* for the Queen's Proctor (*The Treasury Solicitor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 477**

Court of Criminal Appeal

AFFRAY: WHETHER EVIDENCE THAT PERSON PUT IN FEAR NECESSARY: SELF-DEFENCE

R. *v.* Sharp. R. *v.* Johnson

Lord Goddard, C.J., Cassels and Hinchcliffe, JJ.

15th February, 1957

Appeals against conviction.

The appellants were jointly indicted for making an affray. At the trial there was evidence that they had fought to exhaustion in a public street, each injuring the other, and had been watched by a large crowd of people from the opposite side of the street. Each man claimed to have fought in self-defence. There was no evidence from any person that he was actually put in terror. The recorder overruled defence submissions that in the absence of such evidence the charge of affray could not stand and directed the jury (*a*) to consider whether the circumstances were such as to frighten or intimidate reasonable people, and (*b*) that the defence of self-defence relied upon by each defendant was immaterial to the charge. The jury convicted.

LORD GODDARD, C.J., reading the judgment of the court, said that the question the court had to decide was whether it was necessary to call at least one person to say that he or she was put in fear by the conduct of the appellants, or whether it was enough, as the recorder held, that the circumstances were such that the jury might find that reasonable people might well be intimidated or frightened. Since the Indictments Act, 1913, the mere allegation of an affray imported terror and disturbance, but that averment meant no more than an allegation that there had been a real disturbance of the peace by two persons fighting each other in public instead of settling their differences in the royal courts, or endeavouring by a display of force, though without necessarily using actual violence, to overawe the public. It followed from the decision in *Field* v. *Receiver of Metropolitan Police* [1907] 2 K.B. 853, where the Divisional Court laid down what were the necessary elements to constitute a riot, one of which was force or violence displayed so as to alarm at least one person of reasonable firmness and courage, that evidence to that effect must be given, though not necessarily by calling a person to say that he was terrified. It might be enough for a witness to say that persons appeared to be alarmed. In the present case there was evidence on which the jury could find that the appellants were guilty of an affray, and on that matter the recorder's direction was right. As to the second ground of appeal, the recorder directed the jury that it did not matter who started the fight or who was to blame, and that in the present case no question of self-defence arose. Indeed, he said that self-defence for the purpose of this case was quite immaterial. That went too far. If two men were found fighting in a street one must be able to say that the other attacked him and that he was only defending himself. If he was only defending himself and not attacking that was not a fight and consequently not an affray. A man might well defend himself and then pass to the attack or, in repelling an attack, he might use more than necessary force. This raised questions for the jury. The conviction would be quashed, but each of the appellants would be ordered to enter into a recognisance and to give a surety in the sum of £50 to keep the peace and be of good behaviour for twelve months, and in default to go to prison for six months. Appeal allowed.

APPEARANCES: *Edward Clarke* and *Donald Farquharson* (*Registrar, Court of Criminal Appeal*); *S. A. Morton* (*Solicitor, Metropolitan Police*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 472**

POLICE REPORT MADE SUBSEQUENT TO TRIAL SUBMITTED TO COURT OF CRIMINAL APPEAL

R. *v.* Williams. R. *v.* Bell

Lord Goddard, C.J., Cassels and Gorman, JJ.

25th February, 1957

Applications for leave to appeal against conviction.

The applicant, Christopher Joseph Williams, was convicted at the Crown Court, Liverpool, of robbery with violence and robbery with aggravation and sentenced to five years' imprisonment, and the applicant, Edward Bell, pleaded guilty to robbery with aggravation and was sentenced to three years' imprisonment. Both applied for leave to appeal against conviction. The applicants did not appear and were not represented.

CASSELS, J., in giving the judgment of the court refusing leave to appeal, said that the court desired to make some observations. The recorder before whom the applicants were tried had seen fit to send to the court a detective-sergeant's report as the result of inquiries made subsequent to the trial, and in respect of certain allegations made by one of the applicants against the police. The Court of Criminal Appeal sometimes asked for a special report, and sometimes the Home Office did so, but it was undesirable that recorders or judges or anybody else before whom a case had been tried should go out of their way to make further inquiries, because this court had to make up its mind on the evidence which was actually given before the court of trial and upon what took place at that court. In the present case a long and detailed report had been made and observations put forward upon the allegations which one of the applicants made in regard to the case. It was quite unnecessary and of no assistance to this court, and the practice should not be repeated.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 463

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 26th February:—

Commonwealth Settlement
Consolidated Fund
Transport (Railway Finances)

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Customs Duties (Dumping and Subsidies) Bill [H.C.] [28th February.

Read Second Time:—

Northern Ireland (Compensation for Compulsory Purchase) Bill [H.C.] [28th February.

In Committee:—

Shops Bill [H.L.] [26th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Naval Discipline Bill [H.C.] [1st March.

To make provision for the discipline of the Navy, and for other purposes connected with the Navy.

White Fish and Herring Industries (No. 2) Bill [H.C.] [28th February.

To amend the provisions of the White Fish and Herring Industries Act, 1953, relating to grants by the White Fish Authority and the Herring Industry Board towards new vessels and engines and to the white fish subsidy; and for purposes connected with the matters aforesaid.

Read Second Time:—

Barry Corporation Bill [H.C.] [27th February.
Cinematograph Films Bill [H.L.] [27th February.
Legitimation (Re-registration of Birth) Bill [H.C.] [1st March.
Maintenance Orders (Attachment of Income) Bill [H.C.] [1st March.
National Health Service (Amendment) Bill [H.C.] [1st March.

Read Third Time:—

Public Trustee (Fees) Bill [H.L.] [26th February.

In Committee:—

House of Commons Disqualification Bill [H.C.] [26th February.

B. QUESTIONS

LANDS TRIBUNAL (INFORMATION TO THE PRESS)

The ATTORNEY-GENERAL said that it was not practicable to keep all newspapers informed of the dates of hearings by the Lands Tribunal. The possibility of making information about sittings available through the regional offices of the Central Office of Information to newspapers in the area concerned was being investigated. Decisions of the Tribunal could not be publicised in that way owing to the expense involved. [25th February.

CRIMINAL LUNATICS ACT, 1884 (COPIES)

The FINANCIAL SECRETARY TO THE TREASURY said that the above-mentioned Act was out of print and the demand for copies was too small to justify the expense of reprinting. Occasional requests for a copy were met by the Stationery Office offering to supply a photographic reproduction upon payment. [26th February.

HOUSES FOR DEMOLITION (COMPENSATION)

Mr. H. BROOKE said that the Slum Clearance (Compensation) Act, 1956, allowed an owner-occupier entitled to the benefit of the Act to let his house whilst retaining his right to compensation at the higher rate. If, however, he needed to realise the compensation at once he could ask the local authority either to buy the house or to put a closing or demolition order on it ahead of its timetable. He did not think there was a case for amending legislation to protect the position of such owners. [26th February.

COURT ORDERS (NON-PAYMENT)

Mr. R. A. BUTLER said that during 1955 9,838 men and 614 women had been committed to prison for failure to comply with an order of a competent court for the payment of money. [27th February.

METROPOLITAN POLICE (EVICTION OF TENANTS)

Mr. R. A. BUTLER said that the Metropolitan police intervened in eviction cases only so far as might be necessary to prevent a breach of the peace, except in rare cases under the Small Tenements Recovery Act, 1838, when they might be authorised by the court to enter the premises. They would be responsible for furniture only if it were abandoned by the owner, when it would be removed to a place of safety. [28th February.

EXAMINING JUSTICES (PRIVATE SITTING SYSTEM)

Mr. R. A. BUTLER declined a suggestion that legislation should be introduced providing for examining justices to sit in private. He said that examining justices were not required to sit in public and, whilst they normally did so, it was open to them to sit in private if, for example, they believed that to sit in public in a particular case would prejudice the ends of justice. He appreciated that the publicity which proceedings before examining justices received in certain cases might make it difficult to find twelve jurors who came to the case with fresh

minds, but it was not necessarily impossible for them to consider the case as they were required to do solely on the evidence placed before them. His predecessors had taken the view that there were strong objections in principle to all proceedings before examining justices taking place in private and he shared that view. [28th February.

DAMAGE BY AIRCRAFT (CLAIMS)

The PRIME MINISTER said that in order to simplify administration all future claims in respect of damage by aircraft flying under Her Majesty's Government's responsibility would be handled by the Air Ministry, which already dealt with the majority of such claims. [28th February.

STATUTORY INSTRUMENTS

Air Navigation (Fifth Amendment) Order, 1957 (S.I. 1957 No. 278.) 8d.

Draft **Cotton Industry** Development Council (Amendment No. 3) Order, 1957.

Export of Goods (Control) (Amendment No. 3) Order, 1957. (S.I. 1957 No. 247.) 6d.

Export of Goods (North Korea) (Revocation) Order, 1957. (S.I. 1957 No. 246.)

Foul Brood Disease of Bees Order, 1957. (S.I. 1957 No. 250.) 5d.

Ghana (Constitution) Order in Council, 1957. (S.I. 1957 No. 277.) 1s. 11d.

Import Duties (Drawback) (No. 1) Order, 1957. (S.I. 1957 No. 281.) 5d.

Import Duties (Drawback) (No. 2) Order, 1957. (S.I. 1957 No. 282.)

Importation of New Potatoes and Raw Vegetables (England and Wales) Order, 1957. (S.I. 1957 No. 298.) 5d.

Ironstone Restoration Fund (Contributions) (Rate of Interest) Order, 1957. (S.I. 1957 No. 294.) 5d.

London-Edinburgh-Thurso Trunk Road (Grantham and Great Gonerby By-Pass) (Variation) Order, 1957. (S.I. 1957 No. 249.)

London Traffic (Prescribed Routes) (Bermondsey and Southwark) Regulations, 1957. (S.I. 1957 No. 254.) 5d.

London Traffic (Prescribed Routes) (St. Marylebone and Paddington) Regulations, 1957. (S.I. 1957 No. 255.)

London Traffic (Prescribed Routes) (Westminster) (No. 2) Regulations, 1957. (S.I. 1957 No. 256.)

Marriages Validity (The Baptist Chapel, Scapegoat Hill, Golcar) Order, 1957. (S.I. 1957 No. 271.) 5d.

National Health Service (Authorisation of Subscriptions) (Scotland) Regulations, 1957. (S.I. 1957 No. 239 (S.9).)

National Insurance (New Entrants Transitional) Amendment Regulations, 1957. (S.I. 1957 No. 269.) 5d.

North of Oxford—South of Coventry Trunk Road Order, 1957. (S.I. 1957 No. 284.) 5d.

Probation (Allowances) Rules, 1957. (S.I. 1957 No. 272.)

Public Analysts Regulations, 1957. (S.I. 1957 No. 273.) 5d.

Retention of Pipes under Highways (Berkshire) (No. 1) Order, 1957. (S.I. 1957 No. 268.) 5d.

Stopping up of Highways (Cheshire) (No. 2) Order, 1957. (S.I. 1957 No. 267.) 5d.

Stopping up of Highways (Cumberland) (No. 1) Order, 1957. (S.I. 1957 No. 261.) 5d.

Stopping up of Highways (Derbyshire) (No. 4) Order, 1957. (S.I. 1957 No. 262.) 5d.

Stopping up of Highways (Durham) (No. 1) Order, 1957. (S.I. 1957 No. 263.) 5d.

Stopping up of Highways (Glamorganshire) (No. 1) Order, 1957. (S.I. 1957 No. 264.) 5d.

Stopping up of Highways (Gloucestershire) (No. 2) Order, 1957. (S.I. 1957 No. 242.) 5d.

Stopping up of Highways (Kent) (No. 3) Order, 1957. (S.I. 1957 No. 265.) 5d.

Stopping up of Highways (London) (No. 14) Order, 1957. (S.I. 1957 No. 266.) 5d.

Stopping up of Highways (Middlesex) (No. 4) Order, 1957. (S.I. 1957 No. 241.) 5d.

Stopping up of Highways (Plymouth) (No. 2) Order, 1957. (S.I. 1957 No. 240.) 5d.

Stopping up of Highways (Staffordshire) (No. 2) Order, 1957. (S.I. 1957 No. 243.) 5d.

Stopping up of Highways (Warwickshire) (No. 3) Order, 1957. (S.I. 1957 No. 283.) 5d.

Stopping up of Highways (Wiltshire) (No. 2) Order, 1957. (S.I. 1957 No. 244.) 5d.

Strategic Goods (Control) (Amendment No. 3) Order, 1957. (S.I. 1957 No. 245.) 5d.

Telegraph (Inland Written Telegram) Amendment (No. 2) Regulations, 1957. (S.I. 1957 No. 305.) 5d.

Traffic Signs (30 m.p.h. Speed Limit) (England and Wales) Directions, 1957. (S.I. 1957 No. 275.) 5d.

Traffic Signs (30 m.p.h. Speed Limit) Regulations, 1957. (S.I. 1957 No. 274.) 5d.

Traffic Signs (30 m.p.h. Speed Limit) (Scotland) Directions, 1957. (S.I. 1957 No. 288 (S.11).) 5d.

Tuberculosis (North Wales Eradication Area) Order, 1957. (S.I. 1957 No. 257.) 5d.

Tuberculosis (Southern England Eradication Area) Order, 1957. (S.I. 1957 No. 258.) 5d.

Tuberculosis (Yorkshire Eradication Area) Order, 1957. (S.I. 1957 No. 259.) 5d.

Wages Regulation (Cotton Waste Reclamation) Order, 1957. (S.I. 1957 No. 276.) 6d.

Wages Regulation (Keg and Drum) (Holidays) Order, 1957. (S.I. 1957 No. 287.) 7d.

Wakefield (Amendment of Local Enactments) Order, 1957. (S.I. 1957 No. 260.) 5d.

West African Court of Appeal (Amendment) Order in Council, 1957. (S.I. 1957 No. 279.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. P. J. BOURKE, Chief Justice, Sierra Leone, has been appointed Chief Justice of Cyprus in succession to Sir ERIC HALLINAN, who has been appointed Chief Justice (Designate), Federal Supreme Court, British Caribbean Federation.

Mr. J. R. V. BROWN has been appointed solicitor to Shell-Mex and B.P., Ltd.

Sir DAVID ARNOLD SCOTT CAIRNS, Q.C., has been appointed Recorder of the Borough of Sunderland, and Mr. JOHN MEGAW, C.B.E., T.D., Q.C., has been appointed Recorder of the Borough of Middlesbrough.

Sir JOHN GRIFFIN, Q.C., formerly Chief Justice, Uganda, has been appointed Acting Chief Justice, Northern Rhodesia.

Mr. A. H. MCSHINE, Senior Magistrate, Trinidad and Tobago, has been appointed a Puisne Judge in that territory.

Personal Notes

Councillor Nicholas Bentley was presented on 19th February by the Accrington Law Clerks' Association with a travelling clock and a pewter tankard filled with cigarettes, to mark his retirement as chief clerk to Messrs. Barlow, Rowland & Co., solicitors, of Accrington, after fifty-two years' service.

Presentations have been made to Mr. Edward Alfred Foster, cashier and chief clerk to Messrs. Davenport, Jones and Glenister, solicitors, of Hastings, on his completion of sixty years' service with that firm.

Mr. Arthur Norton Whiston, solicitor, of Derby, has retired after fifty-eight years of service with the firm founded by his grandfather.

Mr. Edgar Conway, solicitor, of Birmingham, has retired after almost 57 years in practice in the same firm.

Miscellaneous

DEVELOPMENT PLANS

Caernarvonshire County Development Plan

On 24th January, 1957, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan, as approved by the Minister, has been deposited at the County Offices, Caernarvon, and certified copies or extracts of the plan, so far as it relates to the undermentioned districts have also been deposited at the places mentioned below. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between 9 a.m. and 5 p.m. on ordinary week-days, and from 9 a.m. till noon on Saturdays, except that, in the case of the Urban District of Betws y Coed, the hours shall be 9 a.m. to 4.30 p.m. on ordinary week-days, and from 9 a.m. till noon on Saturdays. The plan became operative as from 22nd February, 1957, but if any person aggrieved by the plan desires to question the validity thereof or of any provisions contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 22nd February, 1957, make application to the High Court.

District and where certified copies or extracts of the development plan are deposited

Borough of Bangor.—Town Clerk's Office, 123 High Street, Bangor.

Borough of Caernarvon.—Town Clerk's Office, Briggs Chambers, Caernarvon.

Borough of Conway.—Town Clerk's Office, Bodlondeb, Conway.

Borough of Pwllheli.—Town Clerk's Office, Town Hall, Pwllheli.

Urban District of Bethesda.—Council Offices, Bethesda.

Urban District of Betws y Coed.—Council Offices, Betws y Coed.

Urban District of Criccieth.—Council Offices, Criccieth.

Urban District of Llandudno.—Town Hall, Llandudno.

Urban District of Llanfairfechan.—Council Offices, Llanfairfechan.

Urban District of Penmaenmawr.—Council Offices, Penmaenmawr.

Urban District of Portmadoc.—Town Hall, Portmadoc.

Rural District of Gwyrfai.—Cwellyn, Caernarvon.

Rural District of Lleyn.—Metro Buildings, Pwllheli.

Rural District of Ogwen.—Tanyfynwent Offices, Bangor.

Rural District of Nant Conway.—Plas Iolyn, Station Road, Llanrwst.

Hampshire Development Plan

Proposals for alterations or additions to the above development plan were on 21st February, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Parish of Hurn, the Parish of St. Leonards and St. Ives, the Parish of Ringwood and the Parish of Sopley, in the Rural District of Ringwood and Fordingbridge, in the County of Southampton. Certified copies of the proposals as submitted have been deposited for public inspection at the following places :—

The office of the County Planning Officer, Litton Lodge, Clifton Road, Winchester.

The office of the Clerk of the Ringwood and Fordingbridge Rural District Council, Public Offices, Ringwood.

The office of the South-West Area Planning Officer, Newnham Croft, Empress Avenue, Lyndhurst.

The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th April, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Southampton (Hampshire) County Council, The Castle, Winchester, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

County Borough of Tynemouth Development Plan, 1950

Proposals for alterations or additions to the above development plan were on 25th February, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of Tynemouth. A certified copy of the proposals as submitted has been deposited for public inspection at the offices of the borough surveyor of the Tynemouth County Borough Council at No. 16 Northumberland Square, North Shields, in the said county borough and is available for inspection, free of charge, by all persons interested at the planning department of the above-mentioned office between the hours of 9 a.m. and 5 p.m. on the usual weekdays and between the hours of 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, The Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th April, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the said council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE SOLICITORS ACTS, 1932 TO 1941

On 31st January, 1957, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of William Douglas Wilde, of No. 5 London Road, Forest Hill, London, S.E.23, and No. 23 College Hill, Cannon Street, London, E.C.4, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry. Upon the application of the said William Douglas Wilde, the Committee directed that the filing of the Findings and Order with the Registrar of Solicitors be suspended during the period allowed for an appeal and, in the event of an appeal being lodged, until the hearing and determination of such appeal. The said William Douglas Wilde did not appeal from the said Order which was filed with the Registrar on 18th February, 1957, on which date the Order takes effect.

THE REGISTRATION OF RESTRICTIVE TRADING AGREEMENTS

The following notice has been issued by the Registrar :—

1. *Position at 28th February*

The 28th February was the date by which particulars of agreements covered by the Board of Trade's Registration Order* of last August were required to be sent to the Registrar. Broadly speaking, this Order required the registration of agreements about common prices and conditions of sale, level or agreed tendering, the granting of preferential terms to certain persons or traders, or the confining of supplies of goods to certain persons or traders. Particulars of these agreements, where they were made before the 30th November, 1956, had to be lodged between that date and the 28th February, 1957. (Where they were made after the 30th November, 1956, particulars have to be lodged within three months of making the agreements.) Not unexpectedly, many people have left it to the end of the period to send in the particulars; and until late in February, very few had been received. By mid-day on the 28th, however, particulars of over 800 agreements had been delivered and they continue to arrive. After they have been sorted, the particulars have to be examined, and a considerable number prove to be incomplete or not in accordance with the requirements of the Act, thus involving further correspondence or discussion before the agreements can be cleared for registration.

2. *Opening of the public register*

The public register of agreements will be opened not later than the 15th April, and it will be opened before then if the Registrar has a reasonable body of agreements ready for registration. Further agreements will be added as they are cleared, and as rapidly as possible. The actual date of the opening of the register will be announced as soon as possible.

* The Registration of Restrictive Trading Agreements Order, 1956—S.I. 1956 No. 1869.

3. *Form of the register*

The register will be kept in identical form in London, Edinburgh and Belfast and will consist of numbered files each containing the particulars of an agreement (or in certain cases a group of agreements) in the form required by the Act† and the Registrar's Regulations.‡. The registered particulars will include the whole of the terms of the agreement and the names of all the parties to it. For the convenience of searchers, there will be two indexes to the register. One index will list in alphabetical order the commodities to which agreements relate and the other will group the commodities by classes. The register will be open for inspection from Mondays to Fridays from 10 a.m. to 4.30 p.m. at a fee of 1s. per day, and copies of material in it can be obtained on payment of a fee.§

4. *Agreements in operation after 28th February*

The Act provided that certain agreements need not be registered at all if ended before the 1st March and could be registered in their altered form if they were altered before that date. There is no similar provision in the Act for agreements in operation after 28th February. Particulars of any agreement of the kind covered by the Board of Trade Order and which is in operation at any time after the 28th February must therefore be sent to the Registrar. If the agreement is subsequently ended or changed, particulars of the determination or variation must also be sent in.

5. *Agreements which have not been registered*

The Registrar has power to take action about agreements which ought to be and have not been registered, and he will exercise these powers if necessary. The powers and the consequences which follow their use are set out in ss. 14–18 of the Act. Broadly, they enable the Registrar to serve a notice on anyone whom he has reasonable cause to believe to be a party to a registrable agreement, requiring him to state whether he is or not; and if so, to send particulars of it. The Registrar may also ask the High Court to order an examination on oath of a person on whom a notice has been served, and the High Court may among other things authorise the Registrar to enter in the register any information in his possession about an agreement. It may, if failure to register was wilful, prohibit the performance of the agreement. The Act also provides penalties for failure to comply with a notice served by the Registrar or for misinforming him.

Office of the Registrar of Restrictive
Trading Agreements,
Chancery House, Chancery Lane,
London, W.C.2. 1*st March*, 1957.

† Restrictive Trade Practices Act, 1956.
‡ The Registration of Restrictive Trading Agreements Regulations, 1956—S.I. 1956 No. 1654.
§ The Registration of Restrictive Trading Agreements (Fees) Regulations, 1956—S.I. 1956 No. 1655.

ANNUAL REPORT ON THE MONOPOLIES AND RESTRICTIVE PRACTICES ACTS

The Board of Trade's annual report on the operation of the Monopolies and Restrictive Practices Acts, 1948 and 1953, covering the year 1956, has been published by H.M. Stationery Office, price 1s. 4d., by post 1s. 6d.

The CITY OF LONDON COLLEGE, Moorgate, E.C.2, announce two lectures on "Infringement of Copyright in Commercial Transactions" to be given by T. A. Blanco White, Barrister-at-Law, on 13th and 20th March, at 5.30–7.0 p.m.

UNIVERSITY OF LONDON: SPECIAL UNIVERSITY LECTURES IN LAWS

The lecture entitled "The Purposes of Criminal Punishment" which was to have been given by Mr. Gerald Gardiner, Q.C., on 14th March, has been cancelled.

At The Law Society's Preliminary Examination held on 4th, 5th, 6th and 7th February, 1957, 9 candidates passed out of 26.

Wills and Bequests

Mr. T. C. Andrew, solicitor, of Exeter, left £43,854 net.

Mr. Walter Hanks Day, retired solicitor, of Maidstone, left £114,875 (£114,116 net).

Mr. Edward Evershed, retired solicitor, of Birmingham, left £278,983 (£274,485 net).

Mr. Henry Edward Harrison, retired solicitor, of Clunton, Salop, left £127,501 (£125,918 net).

Mr. Lionel Hastings Vulliamy, solicitor, of Ipswich, left £95,148 (£94,582 net).

OBITUARY

MR. E. H. BULLOCK

Mr. Ernest Henry Bullock, Town Clerk and Clerk of the Peace for Hull, has died at the age of 45. He was admitted in 1936.

MR. T. HORNSBY

Mr. Thomas Hornsby, solicitor and a retired Regional Controller of the Ministry of Fuel and Power for the Newcastle Area, died on 26th February at Scarborough, aged 84.

MR. H. W. LYDE

Mr. Herbert William Lyde, solicitor, of Birmingham, died recently in London, aged 73. He was president of Birmingham Law Society in 1938, chairman of Birmingham Legal Aid Committee from 1951–54, deputy chairman of Sutton Coldfield Bench from 1952–55, chairman of the Juvenile Court at Sutton from 1945–51 and chairman of Sutton Probation Committee from 1951–55. He was admitted in 1906.

MR. J. H. A. YEARSLEY

Mr. John Herbert Allison Yearsley, solicitor, of Southampton, died at Lyndhurst on 20th February, aged 54. He was admitted in 1928.

SOCIETIES

The Right Honourable Viscount Kilmuir, the Lord Chancellor, will preside at this year's festival dinner of the UNITED LAW CLERKS' SOCIETY, which is to be held at the Connaught Rooms, London, W.C.2, on Thursday, 4th April, 1957, at 6.15 p.m. Application for tickets may be made to the Secretary of the Society, at 2 Stone Buildings, Lincoln's Inn, London, W.C.2. Telephone CHAncery 6913.

At the annual meeting of the SOUTHPORT AND ORMSKIRK LAW SOCIETY the following officers were elected for the ensuing year: president: I. G. W. Newington; vice-president: J. W. Rayner, M.B.E., J.P.; hon. secretary: E. W. Mawdsley, and hon. treasurer: C. D. Watson, J.P.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).